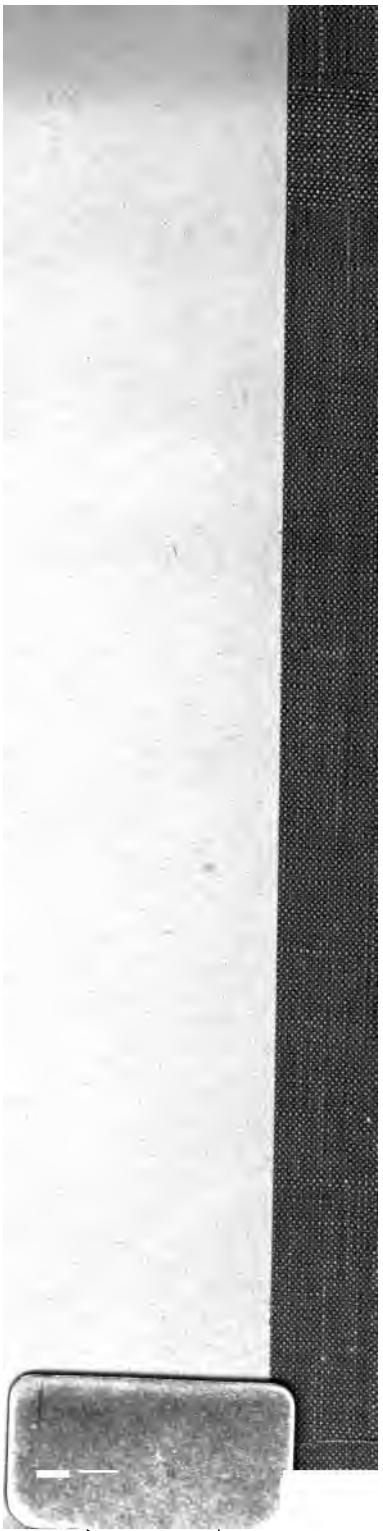
 A speech on the Law of the country by H. Brougham in the House of Commons. 1828



A

SPEECH

ON THE

PRESENT STATE

OF

THE LAW OF THE COUNTRY;

DELIVERED IN THE

House of Commons,

ON THURSDAY, FEBRUARY 7, 1828,

BY

HENRY BROUGHAM, Esq. M.P. F.R.S. &c. &c.

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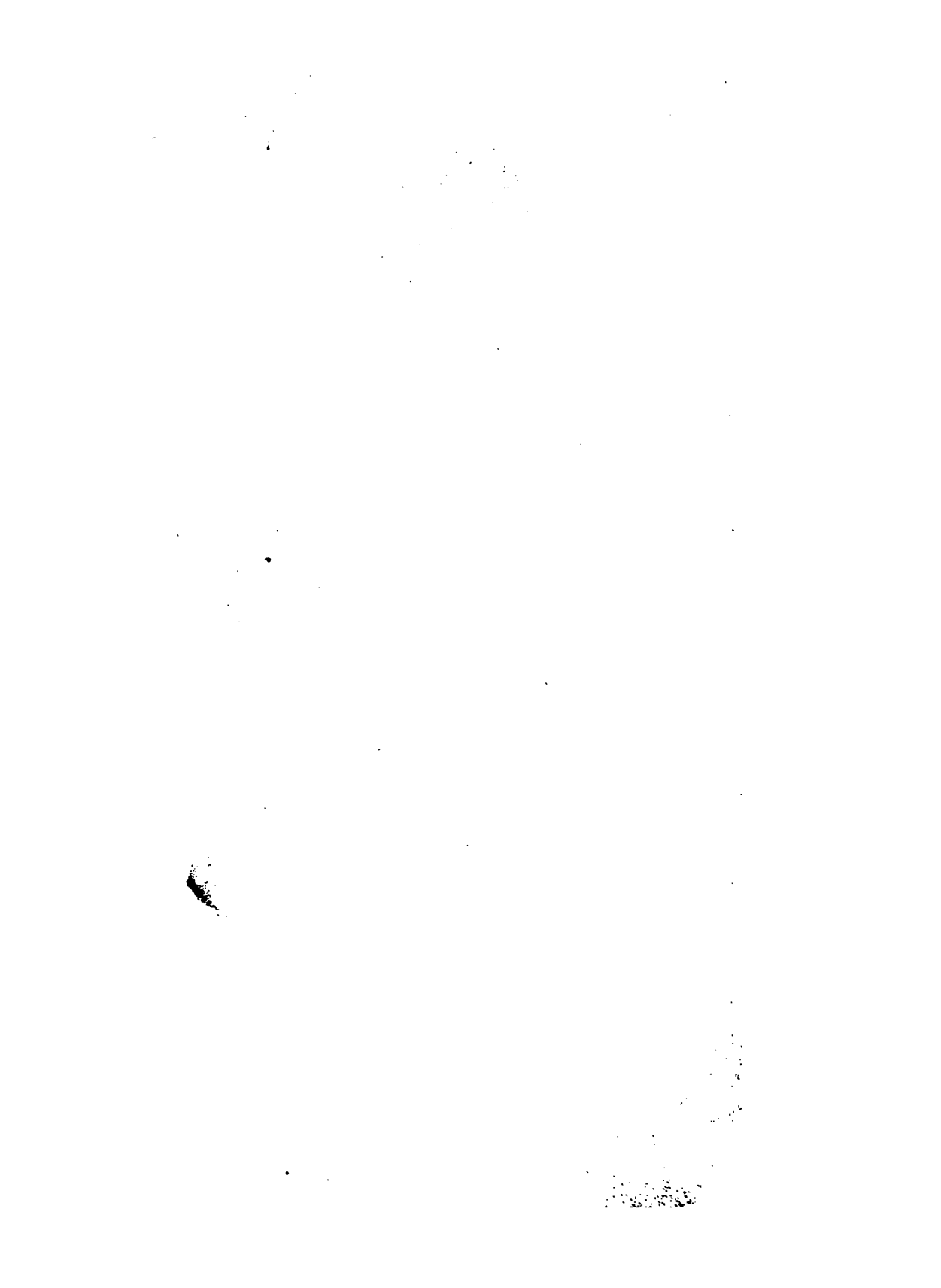

HENRY BROUGHAM, ESQ^RE M.P. & F.R.S.

From an original Painting by Lonsdale at Brougham

Presented to his Family by the Independent Freeholders of [illegible]

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SPEECH, &c.

MR. BROUGHAM rose to bring forward his motion touching the State of the Law in this country, and its administration in the Courts of Justice, with a view to such reforms in the same as time may have rendered necessary, and experience may have shown to be expedient. He said, that in bringing before the House certainly one of the most important subjects which could possibly interest the legislature, he could assure them that he felt, at the same time, deeply impressed with the consideration, that it was one of the most difficult, and the largest, to which their attention could be drawn. He felt that he stood engaged to bring before the House the state of the common law of England; he spoke of the common law, as contradistinguished from the equity administered in certain parts of the judicial system, with the view of pointing out the defects which existed in its original structure, or had subsequently been introduced into it by the gradual operation of time, as well as suggesting the remedies which, in both cases, were applicable to its correction. In undertaking so difficult a task, nothing comforted him, or bore him so much up, as the consideration that parts of this system had ceased to be venerated, had been touched to be improved, and were in the hands of those who would do the necessary justice to their several undertakings. He felt, too, supported by the conviction, that this inquiry was no longer to be avoided, and that he could approach the subject with the respect to which venerable institutions were entitled; and that, above all, he could come to the discussion without uttering one word which could tend to hurt the feelings of any of the classes in whose hands the administration of justice was confided. Not one of them would be either prejudiced or offended—no personal feeling had he to mingle with or introduce into the consideration of so weighty a subject. He felt a confidence unspeakable, too, which rested on other grounds. He had not to cavil or dispute topics before men who were ignorant of the details of the subject, or prejudiced against the acquisition of information upon it; nor would he seek any triumph by the display of technical skill in the exposure of techincal difficulties. He was likewise comforted with the knowledge that, from accidental circumstances, he had derived, from experience in his profession, a practical and thorough acquaintance with the topics to which he meant to allude; and he begged to assure them, that in no one instance would he touch upon any defect or abuse in the administration of justice, of which he had not himself direct knowledge, while employed for one party or another in the progress of his professional avocations. Before he stated to the House what he meant to propose for their consideration, he would mention those branches of the law which it was not his intention to take up.

In the first place, he would avoid the Courts of Equity, in every branch, unless where, from their incidental commixture with the business of the

common law, he was compelled to allude to them; not because he thought there was nothing to be done in the reform of these courts, but because they had been, in some sort, already taken up by Parliament, and the Lord Chancellor had himself announced his intention of bringing in a Bill, in pursuance of the recommendation of the commission which had already delivered a report upon the object of their inquiry. The condition of equity in this country had also been long taken up, to his great honour, by his learned friend (Mr. M. A. Taylor), and who would, he had no doubt, still direct his talents and energies to the completion of the task which he had undertaken. For reasons of the like kind, there were a great many parts of the criminal law from which he was relieved in this inquiry. Happily, since the days when his eminent and lamented friend, Sir Samuel Romilly, had devoted his great talents and long experience to the investigation of the criminal law of this country, and since his other hon. and learned friend, the member for Knaresborough (Sir James Macintosh) had followed up the same arduous inquiry, that subject had fortunately received the countenance and protection of a right hon. gentleman opposite (Mr. Peel), whose patronage of it, coupled with his official power, and consequent means of executing whatever he thought proper to recommend, was, as it must have been, in the highest degree advantageous to the cause to which he lent his aid. Besides, the right hon. gentleman's connexion and influence with the Church and State tended, when he (Mr. Peel) took up the business, to silence much of the alarm which had been sounded against what was deemed change and innovation. He hoped that the right hon. gentleman was seriously disposed to proceed with his good work, for he could not think he meant to sit down now, and say, "So far have I gone, but no farther." If he could so prematurely conclude, then indeed it might be said that little had been yet accomplished. He hoped the right hon. gentleman would still apply the energies of his mind to the further work of reformation that must be effected before the task could be said to be finished.

There was another reason why he proposed to avoid bringing in, as if by wholesale, the wide subject of the criminal law into his present consideration. It was not right to unsettle the minds of the large mass of the people in a matter of so much delicacy and importance as the revision of the criminal law; besides, he knew it was in detail in the hands of others. There was also another branch of law which he would exclude from his present consideration: he meant the code of commercial law. It lay in a narrow compass---it had been formed by degrees, according as the exigency of international affairs had called for it. It was accepted by other states as well as Great Britain, and was not so pressing for alteration as other parts of the law of England. Lastly, he should not advert to the law affecting real property, which formed so extensive a part of the legal system of this country;---not that he might not derive from it many points, in illustration of the argument which he intended to advance, or that he might not with justice propose many changes in it; but because he flattered himself that the Secretary of State for the Home Department, who had long been working with a systematic view to the amelioration of the law, would not overlook this portion of it. Here he could not avoid alluding to the reform of the criminal law, and he would say to the general improvement of the law---which had been effected by the meritorious labours of the late Sir Samuel Romilly, and by the strenuous exertions of the hon. member for Knaresborough (Sir J. Macintosh), both of whom were entitled to the thanks of *their country*. The same debt of gratitude was due for the excellent, lumi-

nous, and comprehensive investigation of this important subject, by one of the ablest lawyers and conveyancers in this country, Mr. Humphreys, who practised in the King's Bench. With the exceptions which he had now stated (and he had to apologize for keeping the House so long in pointing them out, but it was necessary for him to explain what he did not mean to touch), he would address himself to this difficult and extensive subject.

After this explanation, the House would, he conceived, see at once the object and purpose which he had in view. He would not enlarge on the infinite importance of this question; he would not dwell on the high, the paramount necessity for the representatives of the people taking it up in the spirit of deep and serious deliberation: but he would say, that if they viewed the whole establishments of the country, as regarded the government of the King, and the estates of the realm; be those establishments military, as respected either the land or naval force of the empire,—let them turn their eyes to what part of the system they might,—to their foreign relations, which were intended to preserve peace with the world,—to their domestic relations, which were necessary to cause the Government to be respected by the people, or to their fiscal regulations, by which the expense of the whole was to be supported;---still, he would venture to assert, that they all shrank into nothing, they became insignificant, when compared with the pure and prompt administration of justice throughout the empire. He would institute no such comparison. He would say, that all the establishments formed by their ancestors, and supported by their descendants, were invented, and were mainly and principally maintained, in order that justice might be duly administered between man and man. And, in his mind, that man was guilty of no error,—he was a party to no exaggeration—he was led by his fancy into no extravagance,---who had said, that all they saw about them, Lords and Commons, the whole machinery of the State, was designed to bring twelve men into the jury-box, to decide on questions connected with liberty and property. Such was the cause of the establishment of Government---such was the use of Government: it was that purpose which could alone justify restraints on general liberty---it was that only which could justify any interference with the freedom of the subject.

He then invited the House to enter upon an examination of this subject; he invited the House to proceed with him into the different Courts---to mark what failures, in practice, were to be found in the system, as it was originally formed, as well as those errors which time had engendered by a departure from that system; and then to consider whether they might not, safely and usefully, apply to those defects remedies of a reasonable and temperate nature. In the first place, let them proceed to the Courts in Westminster Hall, and observe the course pursued in them. Let them examine the proceedings in the Courts of King's Kench and Common Pleas. The House was aware, that though the jurisdiction of these two Courts was originally confined within separate and narrow limits, yet now they approached very near to each other on almost all subjects. The jurisdiction of the Court of King's Bench, for example, was originally confined to actions where violence was used---actions of trespass by force---and pleas of the crown. But that Court had, by various fictions, extended its jurisdiction most materially. One of these fictions was, that every person against whom an action was brought was supposed to be in the custody of the Marshal, by which means the whole of that jurisdiction which was formerly confined to the Common Pleas had been handed over to the King's Bench. The Court of Common Pleas was

not so fortunate as to regain the exclusive jurisdiction which once belonged to it. An attempt was made with that view under Lord Keeper Guilford, but it did not succeed. He hoped the House would allow him, as a little divertisement in the midst of so dry a subject, to state the nature of the contest between the two Courts, as it was described by Roger North, in his Biography of the Lord Keeper—a work with which he was sure his learned friend (the Solicitor-General) was as well acquainted as he was with the most profound and learned subtleties of his profession. The biographer said, "the Court of Common Pleas was outwitted by the King's Bench, until his lordship came on the cushion; and his lordship, by an artifice, endeavoured to restore the business of the Common Pleas. Sir Matthew Hale complained of this new fiction, though, by a similar *trickum in lege*, the Court of King's Bench had run away with all the business." The author further observed, "In law there ought to be a competition for practice. The King's Bench was originally confined to pleas of the crown, yet they have, by a fiction, which supposes, whether a man owes any thing or not, that he is a debtor, contrived to draw many common causes to them."

Now, these two Courts had not a competition with each other, which arose out of the peculiar circumstances he was about to state. In the first place, the Court of Common Pleas shut its door against many practitioners, in consequence of a fee which was exacted from attornies at the commencement of every term. Although that fee was very trifling, being but 12*s*. 4*d*., still he was decidedly of opinion, that it operated to prevent solicitors from going to that Court. There was also a certain proportion of other fees which was to be advanced by the attorney in a much earlier stage of the legal proceedings than was customary in the other Courts. The attorney in town, or if he resided in the country his agent, had to advance this money out of his pocket in the first instance, and he was not always sure of having it repaid. There was also another cause which tended to lessen the practice in this Court, to which he should now refer; but in doing so, he begged to say, that he spoke with all deference of those most learned persons who possessed an especial and exclusive right to practise in the Court of Common Pleas. That Court was not open to all the members of the profession, but to sergeants-at-law only: they alone had a right to conduct causes there. He knew perfectly well that very great expense was incurred by these gentlemen in prosecuting their education, and he readily admitted that they were able expounders of the law; but the question was, whether it was a useful practice to exclude other practitioners from that Court, and whether it did not tend to lessen the number of causes there, and to throw additional labour on the Judges of the Court of King's Bench? Suitors, of course, had their favourites at the bar, and if they could not avail themselves of their assistance in the Common Pleas, that circumstance must, *pro tanto*, drive suitors elsewhere. The Court of Exchequer, in like manner, though in another way, kept suitors from prosecuting causes there. There was one reason why the Court of Exchequer, as at present constituted, could not, in his opinion, do much business, or have the reputation of doing it; and that was, the various mixtures of suits which were cognizable in it. It was, in fact, a Court of all sorts—of equity and of law—of crown law and of common law—of law which decided between subject and subject, as well as of law that decided between the subject and the Crown. This made suitors, seeing the business done in so many different ways, come to the conclusion that it was not so well done as it might be. He did not, however, believe that

this was a correct opinion; because gentlemen employed in that Court did not, he was convinced, yield to any body of individuals in their knowledge of equity and law. There were in that Court many distinguished equity and common lawyers. In what, therefore, he had said, he referred merely to public opinion, which, whether right or wrong, had been engendered by the constitution of that Court.

There was, however, another reason which tended to render the Exchequer the least employed Court. If there were a monopoly of counsel in the Court of Common Pleas, there was a monopoly of attornies in the Court of Exchequer. There were, in that Court, four attornies and sixteen clerks; and if an individual wished to proceed in the Exchequer, he must employ one of those attornies. It was needless for him to say, that such a system had, of necessity, a tendency at once to shut the doors of the Court of Exchequer against suitors. What, then, was the consequence of those causes which prevented suitors from approaching the Courts of Common Pleas and Exchequer? Why, it was this,—wherever there was but little business done, it had a tendency to induce those in power not to place a strong Judge in that situation, the small portion of business to be gone through rendered the Judge less fit for his office, and, by a natural re-action, the less fitness of the Judge reduced the quantity of business. He was here speaking of past times, with a view, however, to what might occur at a future period. They might not always have the bench so well filled as it was at present. The time might come, when, if a Judge were to be made, in consequence of political influence, who was known not to be capable of properly filling the office, it might be said by those who supported him, "Oh, it does not matter; send him to the Court of Exchequer." Thus, the small portion of business transacted in the Court of Exchequer —the suspicion originating in the general mixture of suits carried on in different ways that the business was not done,—the monopoly of attornies, together with several other causes, and not the unfitness of the Judge, occasioned this Court to be the least frequented of any. From these circumstances, the Judge did not sit sometimes for more than half an hour in the morning, and perhaps there would not be on the paper more than six or seven causes, when he well knew that Lord Ellenborough, when Chief Justice of the King's Bench, had at one time 558 causes set down for trial in London only; and the present Chief Justice had on his paper no less than 840 untried causes. He mentioned this to support his first proposition, that there was not a competition between the different Courts. To say that there was a competition between the Courts,—to say, under the circumstances which he had stated, that suitors had a free access to all, was a fiction—such an assertion was not founded on fact. Experiments had been tried to remedy this state of things, but they were unsuccessful. The first of these was in 1821, when the Chief Justice sat in one Court, and a puisne judge in another. That experiment failed entirely. There was no business done before the puisne judge, and the experiment was tried for only a short time—he believed for not more than one year. Where that action and re-action of which he had before spoken existed—where there was little practice in Court—they were likely, *in majorem sensum*, to have worse judges to try causes; while, on the other hand, great and extensive practice must inevitably form better judges and more acute counsel. There was, however, no other way to produce an equality of business, but by really throwing open the Courts, removing monopolies, and leaving it to men's own discretion to select as they pleased. In 1821,

the Chief Justice sat in one Court and a puisne judge in the other, but the business all went to the former.

Another experiment had since been tried to lessen the pressure of business on the Chief Justice; and that was the experiment which was still going on under the Bill of the right hon. gentleman (Mr. Peel). That experiment—the measure being compulsory—had not failed; but he sincerely wished that it had failed; for that measure had done a great deal of mischief. It was the worst change that could have been devised. Where the Court of King's Bench met, with the Chief Justice presiding —where the suitors resorted—where the bar was mustered—where the public attended—where both counsel and attornies appeared—where the business was disposed of, as it ought to be, gravely and deliberately, with the eyes of mankind, the eyes of the bar, as well as the world at large, turned on the proceedings,—would not all persons declare that to be the Court in which important legal questions ought to be decided? Would not the world, on the other hand, say, if another Court were instituted, in which two counsel and two attornies were present, the one in the cause on, the other in the cause that was to follow, where there was no audience, and the public eye was entirely directed from that to the other Court,—would not the world, he asked, say, that a Court so constituted was that in which the trifling business should be transacted? But under the Bill to which he had alluded, the very contrary was the effect produced: all the important business was transacted before three Judges, and in the dark; for when only two counsel and the attornies in the case were present—when the great body of counsel were absent—and the public were in the other Court, where the Chief Justice presided, he considered that the business was, in truth, done in the dark. An immense mass of trifling business frequently occupied the time of the Court, which might be disposed of elsewhere; and thus the more important business might be expedited. Thus, a motion for judgment, as against the casual ejector, which was a motion of course—a motion to refer a bill to the Master, to report the amount of principal and interest, which was a motion of course —a motion for judgment in case of a nonsuit, which was a motion of course—and a thousand others, were heard with the utmost attention to publicity, before the whole Court—before the whole bar—before the whole body of attornies—before the whole public,—all of which might be settled by the Judges at chambers. The consequence was, that much time was lost, and the most important business—special arguments, raising the most important legal questions—were obliged to be heard in the private, unsatisfactory, and inefficient manner he had described. He wished this system to be remedied, because it was a great and growing evil. It might be said, that the Judges had not time to do the business. He denied that: there was time. Six hours a-day, well employed, was amply sufficient for the purpose. Let them come down to the Court at ten o'clock in the morning, and remain till four—a period of six hours—and the business might be done. But the system was at present extremely ill arranged. In the first place, one of the Judges was called on to attend in the Bail Court, and sometimes he remained there all day, as Mr. Justice Bayley was obliged to do on Monday last; and in the same way, Mr. Justice Holroyd was this day prevented from doing any thing until twelve o'clock. A second reason for the delay of business, was the time occupied at chambers at Serjeant's Inn, with the squabbles of the attorneys—for barristers very seldom attended there. This business formerly

was done in the evening, but now it frequently kept a Judge away till twelve o'clock. Thus, by attending to this trifling business at chambers, the Judge could only give his attendance for four hours instead of six. It might be said, that though commissioners might be appointed to take bail, yet they could not transact the chamber-business so satisfactorily. Barristers of five or six years' standing would be sufficiently skilful to take bail cases; but it was argued that it was necessary for the business at chambers to be transacted by the Judges, in order that they might repress, if necessary, the proceedings of certain men. Now, for his part, he could not see the magic power of the number twelve, although Lord Coke had expressed himself as much enamoured of it as an algebraist would be of the number nine. Lord Coke thought thus highly of it, perhaps, because there were the twelve Apostles, and the Laws of the Twelve Tables. He (Mr. Brougham), however, was of opinion that the number fourteen was equally efficacious. It was divisible by seven, which twelve was not; and it had, in his mind, this great advantage, that though in theory and history it did not appear so prominent as Lord Coke's favourite number, it happened to be two more than twelve. (*A laugh.*) If twelve were considered to be the proper number of judges in Lord Coke's time, he thought that no objection could at this day be offered to the addition of two, considering that the business had increased ten-fold. It could not be argued, when there were 800 causes for trial at Guildhall, that twelve judges were sufficient. That number might have sufficed when Lord Mansfield lived, in the late reign; at which time, perhaps, sixty causes might have been set down for trial; but was it sufficient now, when 600 or 700 causes were to be heard? How the Judges were to get through all the business now, was utterly beyond his comprehension. This was one of the illustrations which he felt it necessary to give, in answer to the heedless and senseless folly of those who charged the Judges and the lawyers with causing all the delay in legal proceedings.

How could it be expected that twelve Judges could go through the increased and increasing business now, when the affairs of men were so extended and multiplied in every direction—*maximis rerum novetur?* Those who advised an increase of the Judges beyond their present number were not innovators. The innovators were, in truth, those who stood still while the world was going forward,—those were the innovators who would only employ the same number of labourers while the harvest was increased in a tenfold proportion,—they were the innovators who, adhering to the ancient system of having but twelve Judges, although the labour was infinitely increased, neglected to keep up the equality, efficiency, and fitness of the establishment; but they were not innovators, who introduced and applied additional power, when the business to be done had exceeded all former bounds, and wished thus to preserve the equality, efficiency, and fitness of the judicial establishment. (*Hear.*) The advantage of this addition would appear still more clearly, when it was considered that it would give them the opportunity of reforming the system with reference to the Welch Judges, which was an extremely objectionable one, which could not be done if there were only twelve Judges. If two more Judges were appointed, the principality might be divided into two circuits, and the newly-appointed individuals might go circuit with the other Judges; and they might also assist at the Old Bailey Sessions. He highly approved of paying the Judges by salaries, and not by fees, as a general principle; but, so long as it was the practice not to promote the Judges,

but to shut the door against the efforts of their fair ambition, so far must they find a tendency in those men to become less active in their exertions than they would be if some little stimulus were placed before them. He, therefore, would hold out a certain inducement to them to labour vigorously, by allowing them a certain moderate amount of fees. He said a moderate amount; and if it were thought expedient to pay them in part by fees, it should be ordered that such fees should not be in proportion to the length of a suit, or the number of its stages, but that the amount should be fixed and defined. He was quite aware that this mode of payment was not likely to meet with general support, especially with the support of the reformers of the law; but he stated the proposition as the result of long reflection, which had produced a firm conviction on his mind that such a plan would be a beneficial one. The great object of every Government in the choice of judges ought to be, to obtain the most skilful and learned men, and also to take care that the excellence of their character afforded the best security for their pure administration of justice. He was ashamed to state so mere a truism, but the House would presently see its application. Their system, however, sinned lamentably in both these respects. In the appointment of judges they would naturally require that the whole field of law should be thrown open, in order that the selection might be properly made. They ought to choose their judges from amongst the men most learned, most accomplished as advocates—men who had judgment to try causes ably—men who had large and enlightened views of legal questions, and who were prompt and expeditious in seizing on the bearings of a case. There ought not to be, in choosing judges from the bar, any exclusive restriction. He alone ought to be selected, in whom talent, integrity, and experience, most abounded, and were most united. The Minister of the Crown might go into Westminster-hall, and choose the ablest man there. Be his talent what it might, be his character what it might, be his party what it might, no man to whom the offer was made would refuse to be a judge. But, in consequence of a custom that would be "more honoured in the breach than the observance," party was too much studied in these appointments. One half of the bar was excluded; for no man could be a judge who was not of a certain party. Unless he were a person known to adhere to a certain system of Government,—unless he professed himself to be devoted to one system of policy,—unless his party happened to be the party connected with the Crown, there was no chance for him; that man was sure to be excluded. Let any person point out to him, if he could, a single instance where a man, known to be in party fetters, and opposed to the Government, had, during the last hundred years, been promoted to the bench. He knew of no such instance in England. He had, indeed, known one or two instances where promotion of that kind had been conferred on men who had changed their party. (*Hear.*) This was not precisely the case in Scotland. The right hon. gentleman opposite (Mr. Peel) had done himself great honour, by recommending Lord Cranstoun, who was a party man; and Mr. Clerk, Lord Eldin, who was in Scotland a greater party man than Lord Eldon was in this country. He should like to see the same impartiality acted on in England. It was of importance to the pure and able administration of justice that it should be so, but he despaired of ever seeing such a course adopted. If all Westminster were to be called on, in the event of any vacancy unfortunately occurring on the bench, to name the man who was best suited to fill that vacancy, to point out the individual whose talents and integrity best deserved

the situation—whose exertions were the most likely to shed blessings on his country—could any person doubt for a moment whose name would be echoed on every side? (*Hear, hear.*) No; there could not be a doubt as to the individual who would be named by those most competent to judge; but then, he was known to be a party man, and that being the case, all his merits, even were they far greater than he was admitted to possess, would not command his promotion.

He blamed this mischievous system, by which the country lost the services of some of the ablest, most learned, and most honest men in the country. (*Hear.*) But judges must always be Tory judges, though for what reason he knew not. Why should the bench be for ever a ministerial bench? And yet it always was a ministerial bench, except, indeed, during those visits, "few and far between," when the Whigs came into office for five or six months; and then, perchance, they might happen to have a Whig judge. (*A laugh.*) He wished to see the choice extended: he wished to see it fall on men, not because they were party men, but because they were strictly impartial men. He spoke impartially; but when there was a Crown cause, a case of libel, or any such matter, before the cou t, there was—there must be—uniformly a certain leaning one way. They had this leaning, and they could not help it, because they knew that they were there, and could not forget how they came there. He spoke from a sense of justice and propriety, and not in the least degree interestedly. He should never take a puisne judge's situation—(*A laugh*); he could not afford to take any such situation. (*A laugh.*) He spoke, therefore, not for himself, or with any reference to himself, but for the country, because he felt this to be a matter of the deepest importance; and from the right hon. gentleman (Mr. Peel) before him, now that he had returned to the Home Department, he really did expect to see this become much more a subject of observation than it had hitherto been. He was afraid he had already tired the House by the length of these details—(*Cries of Hear, hear,*)—but he would now take leave of Westminster Hall, and say a word or two respecting the manner in which the administration of the law was carried on in Wales. Why, he would ask, because it was called the Principality of Wales, should it have a power over life and property to which no parallel was to be found in England? Why should the administration of the law in Wales be different from that in England? In Wales they had judges—able gentlemen, no doubt; he did not mean to say less able than in England,—but certainly no more able, either from talent, information, or experience, than those who fill what Mr. Roger North called "the cushion in Westminster Hall." In general they had left the bar, and retired to the pursuit and occupations of country gentlemen: perhaps they were not, for that, the less fit to be made judges, but not so fit as the others he had mentioned. In other cases, they continued in Westminster Hall; and this was so much the worse, for, being barristers half their time and judges the other half, they were, for that very reason, the less likely to make either good barristers or good judges. But the great objection was, that they never changed their circuits: to whatever circuit they were appointed, over that they continued to preside; and thus it happened that they became acquainted with all the landholders of the neighbourhood—with the gentry,—nay, even with the very witnesses who came before them. The names, the faces, the very characters, of these persons soon became familiar to them, and out of this grew likings and prejudices which never did, and never could, cast

a shadow of shade over the twelve Judges of Westminster Hall. (*Cheers.*) Then, again, they had no retiring pensions: and now mark the result. Last autumn, on one circuit, forty-six causes were entered for trial. How many did they suppose were actually tried? Twenty---but twenty---and of these causes the greater part had stood over ever since the last circuit. Was it not quite evident what ought to be done? Let pensions be given to men who have become too old to discharge the duties of their office, but who seldom became too old to cling to the emoluments of it. (*Hear, hear.*) He was sure it would be the cheapest pension that could be given, and that the Principality would never dream of objecting to it. At all events, let two judges be added to the present number. Let the Common Pleas and the King's Bench be kept open; let the delay arising from chamber-practice be avoided; let the Principality of Wales be divided into two circuits; and then they would have well done and quickly done. And here he would observe, that the matter of circuits required a word or two. Not, perhaps, that it was of so much importance as others that he had already, or should presently, touch upon; but then it regarded judges, barristers, and solicitors, and would be of no little advantage to the country. He should be most glad to see that folly---for really he could not call it by any other name---that absurd and vexatious mode of regulating Easter by *moons*, as it was called, done away with. (*Hear, and laughter.*) Let the returns be made certain, and leave moveable feasts to the church. He had no wish to interfere with the church, let the church be regulated as they pleased; but let this inconvenience in the law be remedied, and let the returns be made on some certain day.

It would be recollected, that when a Bill was introduced to fix Easter Term, Mr. Justice Rook exclaimed, "Good God! think of the horror of depriving the whole Christian community of the consolation of knowing that they all kept Easter on the same day!" (*Hear, and laughter.*) Now he had no wish, not the least desire, to deprive the Christian community of this consolation, if consolation they found it; they might enjoy it still, but business ought not to be sacrificed to their ideas of comfort and consolation. There was no inconvenience in Easter being moveable, but there was a very great inconvenience in making the returns moveable. As they were now happily a purely Protestant country—and the more so, and the more likely to remain so, since they were now under his Grace the Commander-in-Chief---(*A laugh*)—surely all the remnants of Popery, and above all, such inconvenient remnants as this, ought to be done away with. Let Easter Term always begin on the 10th of April, and the inconvenience would cease. There was no error so foolish or so vulgar as that which led people to believe that the more the law was perplexed by the intricacies of its proceedings, the more advantage resulted to the country. The fact was quite the reverse; for by those means, they made inferior, both in rank, in feelings, and in accomplishments, that profession out of which the judges of the land must come. (*Hear.*) But much more ought this certainty to be effected, when it is clear that it was productive of advantage to the country. To fix Easter Term four or five weeks earlier or later, would be a great convenience. Now, to observe how hard the present system fell, for instance, upon those who, like himself, frequented the northern circuit. He reached his home last year, he could assure the House, after a period of extremely hard labour, on the 20th or 22d of September, having left it on the 10th of October in the preceding year, in order to enjoy a vacation of one fortnight---for Lord Tenterden

fixed the sitting before term for the 9th of October. He was one of those who had joined in requesting his Lordship to postpone his sittings to a later date. Lord Tenterden, than whom no man was more anxious in the discharge of the duties of his office—who was never more happy than when he was hearing causes—who was most indefatigable in getting through the business before him,—said he should be most happy to oblige the gentlemen of the bar, and that he was glad in having an opportunity of accommodating them. With this, his lordship very kindly postponed his sittings from Tuesday the 9th, to Tuesday the 16th *(Hear, and a laugh)* —for one week. He was very much obliged to his lordship, even for a week; he could have wished it had been longer; but his lordship said, that from the state of the paper, it was all he could grant. His lordship's paper was, doubtless, extremely heavy; and too heavy it must always be until some other system was adopted. If they would have two judges sitting at *Nisi Prius* at once, each of them taking a particular class of trials—the one confining himself to the heavy business, and the other to bills of exchange, promissory note cases, and the like—the whole business of the Court could be got through properly, and with despatch; but as the law now stood, it was utterly impossible for any man, in days consisting of no more than twenty-four hours, and labouring for eleven months in the year, to dispose of the business before him. He said for eleven months, for the Court, with the exception of a day or two of respite, sat for eleven months last year. If they said that all real actions should have their domicile in the Court of Common Pleas, then actions which in their nature were partly real might be carried there too. In the same manner, other causes might be disposed of in the Court of Exchequer---a reform having first of all been made in that Court. Let the Chief Baron sit in equity, and a more able and learned man than the present Chief Baron they never could have for this purpose. *(Cheers.)* Let him really sit and hear cases in equity, which might be done with great advantage, and which he was expressly authorized to do by Act of Parliament passed for that purpose, though he (Mr. Brougham) had never heard that he was in the habit of so sitting. With one Baron, then, sitting in equity, and one to the other business of the Court, not of an equitable cast, then let the others be divided between the Courts of Common Pleas and King's Bench, and they would not only relieve the King's Bench of a weight of business which was now become almost intolerably oppressive, but would find, in the effect produced, both in the judges and the practitioners, the happy consequences which always resulted from a just division of labour. *(Hear.)* And now he came to speak of the courts of civil law---and he confessed that he approached to touch this subject with tender, and almost, he might say, with a trembling hand, because he had not the same means of judging of these as of the other Courts, and he was not, therefore, so well able to appreciate the good, or expose the bad, points in the constitution of them. The observations, however, which he had to make upon this part of his subject, resolved themselves into points which had reference to the Judges of these Courts. In the first place, he would have them paid better: there would be no objection, he apprehended, to this on their part. At present they were greatly underpaid. Take, for instance, the Judge of the Admiralty Court, who filled the highest, the most important trust of all, if one considered the fearful amount of property which was disposed of by his decrees. His salary was only 2,500*l.* a year; but---and he begged to call

the attention of the House to this fact---that Judge's fees amounted to 7,500*l.* in time of war; in time of peace there were no fees. (*Cries of hear.*) He confessed that he did not like to see a judge of this character, who decided upon the property of neutrals---upon international questions---who advised his Majesty upon points of the utmost delicacy,---paid in so dangerous a manner, and find so wide a difference between his salary in time of war and his salary in time of peace.

He begged leave to be perfectly understood; he did not say this with reference to any thing that had happened in consequence of this mode of paying the Judge of the Admiralty Court, but he said it because he did not think it wise---he did not think it safe---he did not think it decent, to make so large an increase to a judge's salary depend upon whether the horrors of war, or the blessings of peace, frowned or smiled upon his country. (*Cheers.*) Another point was the manner in which the judges were appointed; and here they met with one of the worst, one of the most dangerous, relics which Popery had left behind her in this country. With the exception of the Judge of the Admiralty Court, who was appointed by the King, all the civil judges who decided upon questions of marriage and divorce, and upon the validity of wills---those judges who disposed of these the most difficult and the most delicate questions that can ever arise,---these judges were appointed, not by the Crown,---not by a minister who was responsible, and who could be removed, but by the Archbishop of Canterbury and the Bishop of London, who could not be removed,---who were not lawyers---who were not statesmen---who were not politicians,---but who were priests of a high order, it was true, but not for that reason the more fit to have any thing to do with the appointment of judges. (*Loud cheers.*) So it was at York, where the judges were appointed by the Archbishop; so in all other Ecclesiastical Courts, where the judges were appointed by the bishops of the respective dioceses in which they were situated. It was true that an appeal laid from them to the Court of Delegates; but then it was equally certain that the Court of Delegates was the greatest mockery of a court in the world. He would show them how this power of appeal to that court, and to no other place, made the matter worse instead of better. See how that Court was constituted---how the judges were appointed. It consisted of three common law judges, and about half a dozen doctors; so that, in point of fact, they appealed from judges of as much learning and research as Lord Stowell, and Sir John Nicholl, and Sir Christopher Robinson,---the great luminaries of the civil law in this country,---to four or five doctors, who are of course the worst in the Court, because they are the youngest, and have little or no business,---for to have been engaged in the cause would be a bar to their sitting as judges. In a word, this proceeding was about as absurd as though, in a cause which had been tried by Mr. Justice Holroyd, Mr. Justice Bayley, and Mr. Justice Littledale, the appeal should lie to three gentlemen who, having been called to the bar the preceding day, had not been in the cause, because they had not had an opportunity of being in any cause at all. This was all he had to say respecting the Courts of Civil Law. "But, Sir," (continued the hon. and learned gentleman, turning to the Speaker) "I beg leave to say, and especially in addressing you, that in what I have said respecting the manner in which the judges of the Civil Courts are appointed, I did not intend to say any thing that was at all disrespectful to those high dignitaries of the church to whom I have alluded. There is no man more ready than myself to acknowledge and to respect their virtues as prelates, their acquirements

and talents as scholars, and their accomplishments as gentlemen." (*Cheers.*) The hon. and learned member continued. He had now come to another Court,---to that tribunal which was called the Privy Council. This was a most important court, because they not only decided upon matters of law, but because a committee of them sat in judgment upon cases in which their decision was final. The most important part of their jurisdiction was, perhaps, the hearing of plantation appeals. The isles which studded the sea in the east, and those in the Archipelago of the west---peopled by various castes, great in number, and abounding in wealth---some of them extremely litigious, as the children of the new world were generally found to be---thronged, too, by crowds from every part of the world, who came to speculate, to barter, and exchange,---these vast numbers, scattered over a domain of so great an extent, were all under the jurisdiction of the Privy Council. In some of the places over which its jurisdiction extended, the Dutch law prevailed; in others the Mahometan law; in others the civil law: yet all the inhabitants of these places must come and prefer the decision of their disputes to the necessarily ignorant Privy Council. To mend their ignorance would require time, a very long time. It would be necessary to form a bar who should confine their practice exclusively to these subjects and to this court. Still, however, even this would not do. Let it be effected, and he would show that it would do nothing. From the returns before the House it would be seen, that in the space of twelve years, the Privy Council had sat only nine days in the year;---nine sittings in a year, to decide all the litigations of all these settlements, in which were included the establishments of Calcutta and Madras! They had only nine sittings in which to decide all the causes that might be appealed to them from 70,000,000 of people! Only nine sittings to decide all the appeals which all the litigation of Ceylon, the Mauritius, and all the colonies of North America, might furnish them within a year!

He need hardly say they did not suffice, though the appeals in these twelve years were by no means so numerous as might have been expected. He marvelled that they had been so few: no, he was wrong to say he marvelled, because there was a very good reason for it. The most efficacious mode to prevent the frequency of appeals was, to shut up and never to decide those that had been lodged. In these twelve years, there were 467 appeals, to which might be added 50 from India, making in all 517, and the number disposed of amounted only to 243. The total number was certainly reduced by 243 in the twelve years, but the House must not suppose that even these were decided. Of this number of 243, only 129 came to a hearing; the remainder were either compromised, or *non pros.* entered on account of the delay. Taking, therefore, all that had been heard during the twelve years, they averaged about ten causes a-year, or one and one-ninth for each day of sitting. Of these 129, it must also be observed, that 56 of them were merely reversed, which would frequently happen from the very constitution of the courts in some of these happy countries. In one court a worthy captain is a judge, and a major is the chancellor in another, and then the learned and gallant chancellor,—for they found there, as we now found here, that a mixture of the military and civil character was not objectionable—made the nature of appeal very simple and intelligible. (*Cheers, and laughter.*) But, as in courts elsewhere, so it was with the Privy Council. There were lay-lawyers among them as well as among other judges. There was, generally, only one judge—the Master of the Rolls—and he had a great deal to do in his own

court; the rest were lay-lawyers. An hon. gentleman, whom he saw opposite, was sometimes there; but he was a lawyer, and was always of a great deal of use: but, upon ordinary occasions, the Master of the Rolls, only, sat in company with two persons—the one an elderly gentleman, who, he believed, had been an ambassador somewhere, and had been educated as a lawyer; the other a puisne Lord of the Admiralty, who had never been either an ambassador or a lawyer, though, if he had been educated for both, would, no doubt, have been very competent to be either. Such was the court which sat in judgment upon the property of so many millions of their fellow-subjects, and which, on one occasion, decided a case which involved property amounting to 30,000*l.* a year in the space of five minutes; thereby reversing a judgment which had been pronounced by the four Judges of Calcutta, after a solemn discussion of nineteen days. The House, however, had already seen that promptitude of decision was not the general characteristic of this court. Before he pursued his account of it any farther, the House would, perhaps, allow him to mention a case which came under his own knowledge, by way of illustration. The hon. and learned gentleman then mentioned a case which arose out of the disputes of persons claiming the right of succession to an Indian principality: it had been decided in several courts in India; the appeal to the Privy Council was lodged in 1814, and it was not yet decided, but the country, in the mean time, had been taken in execution by the Company; and he knew, of his own knowledge, that ever since the death of the Queen of the state, upon whose decease the dispute arose, it had been in precisely a similar situation to that in which property would be in this country, if it were in the hands of sheriffs' officers. He could say now no more upon this matter, except so much as he felt it necessary to say, in order to remind the House that it was the worst of all follies, the most mistaken of all policy, to attempt to stop litigation, not by affording a cheap and expeditious remedy, but by an absolute denial of justice, in the difficulties which distance, expense, and delay, produced. The distance they could not remove if they would; the ignorance it was hardly more practicable to get rid of: then, for God's sake, why not give to these people what they had it in their power to bestow—a speedy and cheap administration of justice? (*Loud cheers.*) He would say, reform the judicature of India. He should like very much to know why there was such an exclusion of jury trials in the courts of India. He knew, and every body else knew, who had taken the trouble to inquire, that natives were eminently capable of applying their minds to such matters, and that they possessed powers of discrimination in a very high degree. Men were sent out there: they went out safely—to make money if they could, and to administer justice. And there they sat—in total ignorance of the language, in total ignorance of the manners, the habits, the customs of the people, and wholly dependent on their pundits for information on all these subjects. The House would not suppose that he meant to insinuate for a moment the possibility of suspicion as to the conduct of the judge in this position or case. He was sure that the party who occupied that high office would rather cut off his right hand, if the alternative were put to him, than take the bribe of a bean to misdecide a cause that came before him. But he was by no means so secure of the pundit upon whom the judge was necessarily dependent. The experiment, in fact, of trial by jury, had been made; it had been made in Ceylon, where it was at first resisted, but afterwards met with complete success. He was acquainted with a parti-

cular case, indeed, the details of which were too long to lay before the House, but in which the superiority of a tribunal of which the natives of the country formed part, had been completely demonstrated. It was a case of a trial for murder, in which, out of a jury of twelve persons, eleven were disposed to find the prisoner guilty. One young Brahmin alone held out; and displayed such extraordinary talent in the analyzing of evidence, with so much tact in cross-examining witnesses, that, in the end, after the whole court and the whole bar had tried their powers in vain, he succeeded in bringing over the other eleven, and the accused party was acquitted. This was not surprising, when it was considered that the Brahmin had the advantage of speaking his own language, while the Judge spoke necessarily through the medium of an interpreter: but it demonstrated the advantage of the jury system, and it had prevented a consummation little short of murder—an innocent man from being executed.

For considerations which he might press upon the House without end, he insisted on the expediencyof the sy stem of trial by jury. Nothing could be more calculated to conciliate the minds of the natives, than the allowing them to form part of the judicial tribunals to which they were subject. It gave them an understanding of the nature, and with the nature of the justice of the law by which they were governed, and an interest in supporting it. Let us introduce this system, and we should have the hearts of the whole people of India with us—a stronger defence, and a cheaper, than our army of Sepoys. Let us give them satisfactory justice, and available appeal, and the people of India, in case of rebellion, would do as the Singalese had done to the last disturbances in their island—they would flock round our banners, and, instead of betraying us, aid us to crush the insurgents by whom our empire was opposed. *(Hear, hear.)* He now came to the last article in the present division of his subject—a topic which he almost felt a horror, standing where he did, of approaching—the Justices of the Peace of the country, and their jurisdiction. Surrounded as he was, equally among his own friends, and on the other side the House, by gentlemen in the commission, it was a subject on which, it would be admitted, there was some delicacy in trenching. Nevertheless, considering the changes which had been effected in modern times, he could not help thinking it worth inquiry, whether some amendment might not be made in our justice-of-the-peace system. The first doubt that struck him was, whether it was fit that they should be appointed as they were---merely by the Lord-Lieutenants of counties, without the interference of the Crown. It was true, that the Lord Chancellor issued the commission: but he relied entirely upon the Lord-Lieutenant, or the *custos rotulorum*---for it was in virtue of that part of his office that the Lord-Lieutenant was so employed---for the selection of the parties. Now, he could not understand what particular quality it was peculiar to a Keeper of the Records that fitted him, above all other men, to say who should be justices of the peace. To him, indeed, the trust seemed as absurdly and incongruously confided as it was possible that it could be. As regarded the selection, he thought it was as inconveniently provided for, as though the Judges of the land were chosen by the opinion of some clerk of the Treasury. *(Hear and laughter.)* It might be, that the choice would be judicious; but the arrangements would be but indifferent for securing that it should be so. However, the Lord-Lieutenant it was who chose the justices, and the Lord-Lieutenant alone who could remove them; for they could only be removed by the issuing of a new commission, in which their names were

omitted; and this the Lord Chanceller never would consent to do, unless in cases where direct malversation was established.

It had been laid down as a rule by the late Lord Eldon, from which no consideration, his lordship had been used to say, should induce him to depart, that however unfit a magistrate might be for his office, either from private conduct or party feeling, he would never strike that magistrate off the list, until he had been convicted of some offence by the verdict of a Court of Record. This was the resolution upon which Lord Eldon had always acted. No doubt his lordship felt that, as the magistrates gave their services gratis, they ought at least to be protected: but it was a rule which opened the door to very constant mischief and injustice; and he himself could, if necessary, quote many cases in which it had been most unfortunately persevered in. In looking, however, at the description of persons who were put into the commission, he was not at all satisfied that the choice was made with competent discretion; and upon this part of the question he might as well declare at once, that he had very great doubts as to the expediency of making clergymen magistrates. This was a course which, whenever it could be done conveniently, he should certainly be glad to see arrested. His opinion was, that a clerical magistrate, in uniting two very excellent characters, pretty commonly spoiled both: and the combination produced a sort of what the alchymists called *tertium quid*, applicable to very little indeed of beneficial purpose, and, indeed, comprising all the bad qualities of the two. *(Hear, and laughter.)* There was the activity of the magistrate in an excessive degree---over-activity was (morally) a very high magisterial crime, and almost all the magistrates distinguished for over-activity, were clergymen—joined to the local hatings and likings, and generally somewhat narrow-minded opinions and prejudices which were apt to attach to the character of the parish priest. There were some Lord-Lieutenants of counties, he knew, who made it a rule never to appoint a clergyman to the magistracy; and he entirely agreed in the policy of that course, because the habits or education of such gentlemen were seldom of an enlarged or worldly description, and therefore by no means calculated to qualify them to discharge the duties of such an office; but generally speaking, as the House would be aware, through the country that rule did not exist. But the natural transition from the question of the system under which our county magistrates were chosen, was to the nature and extent of the powers and interests which were intrusted to them; and when he only referred to one of these---the power of licensing public-houses—what a chapter of offence and misgovernment did not those few words open! *(Hear, hear.)* It was in the power of two magistrates, the House would remember, to give or refuse any man a licence without assigning any reason for their decision. They might grant a licence where it ought not to be granted, or was not wanted; or refuse one which ought to be granted, and was wanted; or grant one to a house which was newly established, and a nuisance to a neighbourhood, or refuse one to a house established for a century, and against which no reasonable exception could be made; and all this without incurring any responsibility, or being bound even to give any explanation of their conduct. There was no power in the land by which a magistrate doing these things could be questioned or controlled. A rule of *mandamus* would not lie.

He (Mr. Brougham) had himself moved for such rules, in very strong cases, calling on justices to grant licences, and had been refused. In one case, a learned friend of his had obtained such a rule---in a very flagrant

case---to the surprise of all the profession; but the only consequence had been, that the rule had been discharged, and the plaintiff made to pay the costs. Everybody, in fact, was aware, that in such a case a *mandamus* would not lie. The only course was criminal information, or by impeachment; and no one thought of impeaching a magistrate any more than of impeaching a minister. *(Hear, hear.)* For a criminal information, it must be shown upon affidavit---upon several affidavits, and to the satisfaction of the Court, which was seldom too credulous in receiving complaints against magistrates,---that the party moved against had been wilfully and corruptly guilty of malversation. A hundred cases might occur, of the most clear and obvious character, in which, nevertheless, it would be impossible to produce affidavits to this effect; and even after they were produced, the magistrate had nothing to do but to come forward with a counter-affidavit, swearing that the motives from which he acted were pure; and unless the case were as clear as the sun at noon, the rule was discharged, with costs against the party who applied for it. But even this course by criminal information---the means of obtaining a rule, afterwards to be lost and paid for, upon the oath of the defendant in person,---this consolation could only arise out of the exceeding folly and mismanagement of the licensing magistrate. He need only keep his own counsel; do that which it was difficult sometimes to an angry man to do---hold his tongue, and his job was completed with the most perfect security. He had only, when the question came on as to the licence, to refuse it without assigning any reason; to grant a licenee, or take one away, without naming any cause. There was no law in the country which compelled him or called upon him to state a cause; and while he was silent, he was safe. The cause might be the very basest, or the most corrupt, that could be imagined, and the effect of a refusal the entire ruin of an honest man; yet, if he had but an ounce more wit than *Justice Shallow*, and could hold his tongue, he might commit his injustice and defy the consequences. The cause might be of preference between two inns on the north road,---that a justice had used one house as a brothel, and had not been permitted so to use the other; and yet he had only to give his preference, without giving any reason for it, and he (Mr. Brougham) would defy the losing party to make out a case, or obtain redress. *(Hear, hear.)* The fact was, that he could give the House but an imperfect idea of the abuses of this part of the magistracy system, for he had never been in the habit of attending quarter sessions. What he knew personally was but a little, and arose out of appeals from the sessions to the Court of King's Bench; but he had been favoured with information from quarters upon which he could rely, and among others from a gentleman of the highest character and talent, himself a magistrate and bred to the legal profession, whose letter (it would not detain hon. members long) he would read to the House.

The hon. and learned member then read extracts, at considerable length, from the paper to which he alluded, generally conveying the strongest disapprobation of the licensing system, as at present established. One of the worst parts of the licensing system, the writer thought, was that it placed property to the amount of millions in the hands of an individual who used his authority in the retirement of a private room. The only utility that ever belonged to the system had been, that it perhaps afforded a ready remedy for the nuisance of disorderly houses; but this power was now left wholly dormant, in favour of the interests of particular brewers, and the trick of putting a new tenant in where a

house had been ill conducted, was resorted to, upon the pretence that it was the occupant of the premises that was in fault, and that the house itself, being but bricks and mortar, could commit no sin. This was a device to which he (Mr. Brougham), wished particularly to call attention, because it was one upon which he entirely agreed with the individual whose letter he was quoting. It was mere imposture to talk of a new tenant, and of the bricks and mortar carrying no sin---imposture which never could be attempted for any straightforward or honest purpose. Every body knew that it was the character of a particular house, quite as much as the character of the tenant, which carried particular classes of individuals to it, and kept other classes away. There were houses which no change of tenantry could render fit to be kept open---houses of which, if an angel were the owner as well as the sign (*Hear, and laughter*), no reform could be expected. The hon. and learned member proceeded to read from the letter before him, which declared that many magistrates were actually only in the commission to support jobs of the description alluded to; and that these were known by the nicknames of "brewers' hacks," "justices of the pewter," &c. (*Hear, and laughter*). These were strong charges; but he (the hon. and learned member), had no hesitation in saying that he entirely and implicitly believed them. In fact, the evidence of the state of the brewers' trade proved what the state of the licensing system of necessity must be. About a dozen great brewers held the monopoly, for the supply of beer, of all London. They made it of what quality they would, charged what price for it they would, and it was found impossible, in the state of the law, to stand in any competition against them. He repeated, that the brewers of the metropolis defied competition, and were enabled to do so, and enabled by the law. It was an imposition to talk of the difficulty of meeting them as to capital: the capital had been found for competition with them, and the speculation had wholly failed. The Golden-lane Brewery had been started with every circumstance to ensure success: at its first opening, the prospect of opposition was so beneficial to the public, that the London brewers had improved the quality of their beer on the instant, and had lowered the price a penny a quart, making an abatement of more than a million of money upon the quantity annually consumed. Now, what had been the fate of this establishment?

It was fit that the House should hear. During eight years that the endeavours of the proprietors were continued, they found it impossible to obtain a single new licence; while hundreds of new licences were granted within the same period to houses in the possession of other brewers. (*Hear.*) This was not all. There were cases in which licensed publicans had actually been threatened that they should be deprived of their licences if they had any thing to do with the Golden-lane brewery. At length the establishment had been borne down, and the monopoly of the porter brewers had triumphed. (*Hear, hear.*) It was not in London alone that this state of things existed. The system in the country was the same: everywhere the trade was in the hands of a few; and the power of the licensers kept those few beyond the possibility of being interfered with. He had no difficulty in saying, that he could name cases in which there could be no doubt that licences had been refused from party motives. He could equally point out instances in which licences had been granted from a similar feeling. He spoke here with confidence; because, in the course of one or two Bills which he had brought into the House upon the

subject of the sale of beer, he had received numerous communications, supported by affidavit, from licensed victuallers, who believed that a statement of their grievances might assist a general reformation of the system. He had known instances where licences had been taken away purely from motives of personal dislike. He knew one instance where a licence had been taken away from a house, because a magistrate, travelling in a cold night, had been kept waiting for some time at the door of it. (*Hear, and laughter.*) In the case to which he alluded, he had been applied to upon the subject of obtaining redress: but the justice had kept his counsel; he had uttered no threat, nor expressed any personal displeasure: he had refused the licence without stating any reason; and he (Mr. Brougham) had been compelled to admit that there was no utility in endeavouring to proceed against him. (*Hear.*) Unfortunately, too, the blame was not confined to the licensing system; the same fault, and the same spirit, ran pretty nearly through all the business that country magistrates did. He believed that there was no more monstrous tribunal in any country in the world, nor more monstrous injustice perpetrated under any authority, than in the convictions before sporting magistrates, for offences, or alleged offences, against the game laws. (*Hear, hear.*) He did not mean to say that such magistrates were corrupt; but they were violent, which, as far as the offender was concerned, amounted to the same thing. They had a sort of undefined notion of something peculiarly sacred and exclusive in the property of game; and a kind of instinctive indignation against that *caput lupinum feræ naturæ*, or poacher, which rendered them most unfit and dangerous judges of the case of any man charged with that description of criminality; and yet these men held the power of imprisonment—of transportation,—of transportation for fourteen years, and, in some cases, for life. He did not wish to make any personal allusions; but there were sentences at which he often shuddered, when he saw the names of the parties on the bench when they were pronounced,—when he saw these sentences passed by persons who had no responsibility,—persons not educated in the legal professions,—persons not selected either as to their character or their acquirements for their fitness to discharge such perilous duties!

It was true that the country got their services for nothing; but even gold, it was our duty to recollect, might be bought too dear. It was, in fact, scarcely possible to conceive the existence of such a state of things, if it were not broadly and actually before us. The Judges of the land were chosen with every caution; and they could not be chosen with too much caution for the delicate duties which they had to perform. They consisted of men bred to the profession at the head of which they acted, and responsible for every syllable that they pronounced. Here were the same duties, the most nice and critical from among them, committed to the discretion of men who were, according to law, freed from all personal responsibility, and who had not even the common check upon their conduct, that they were known, and that their names went forth to the world in conjunction with the judgments which they pronounced. Half the mischief of this system was, that the act done was not the act of a particular individual, but the act of "the quarter sessions." It was "the justices," or "the magistrates," who had done this or that; not directly and nominally, "Mr. Such-an-one," or "Sir John Such-an-one;" and so two-thirds even of the moral responsibility was got rid of. While men were men, it was vain to expect otherwise,—where there was not responsibility there

would be injustice. There was no appeal from the jurisdiction of these magistrates in criminal cases. In civil questions, there was no resource, unless where they themselves thought fit to send a case to the Court of King's Bench. Surely, then, it was imperative, if the system were to go on at all, to endeavour to amend it,—to introduce some provision under which magistrates might be more cautiously selected, and, in case of need, more easily removed. Taking all that was stated to be true, he by no means agreed that it was impossible to pay sufficient deference to the county magistracy, because we had their services for nothing. He, for his part, took dear justice to be a cheaper thing than cheap injustice. *(Hear, hear.)* The question of payment, in his view, to the country, was nothing. But, in truth, the magistrates were already paid in money, or in money's worth. They were paid, besides the honour attached to their office, in fees to their clerks, and jobs which they could give to their dependents. This last system of provision was sometimes pushed really to a ludicrous extent, and he would just shortly state a recent transaction to the House, with which he was furnished by a gentleman on whom he entirely depended. A clerical magistrate, in a county which he would not name, had a clerk to whom he wished to give rather more emolument than his ordinary fees, and accordingly proposed him at the quarter sessions for the office of surveyor of weights and measures, at a salary of a guinea and a half a week. This having been assented to, the new surveyor, who found it inconvenient to do his business himself, immediately appointed a deputy at five shillings and sixpence a week. The party from whom he (Mr. Brougham) received his information, had objected to this last proceeding, that one dignitary was sufficient; and that if the deputy was to do the duty, he ought to take the office in his own right, and receive the salary. But the Court had, with one voice, overruled the opposition, and not only confirmed the new surveyor of weights and measures in his place, but absolutely sworn in the deputy, under the title of his "assistant." *(Hear, and laughter.)*

Apart, however, from these more eccentric proceedings, the mere amount of fees on commitments brought in a considerable sum of money to magistrates' clerks. Connected with which fact, he was compelled to observe, that the late Bill for increasing the facility of allowing expenses to witnesses, and other persons engaged on trials, had done considerable mischief. It was possible that advantages had been aimed at, and up to a certain point obtained, by the passing of this Bill; but he doubted that it had multiplied, very considerably, the number of commitments. Certainly it had had this effect—that a great number boys who ought to have been ordered to be whipped, and sent about their business, had been committed to prison for trial. And, in whatever state of morals such boys went into goal, it was well known that they were sure to be confirmed thieves when they come out of it. He was afraid that the facilities of the Bill had been very eagerly jumped at by two classes of magistrates—those who were desirous of a little pecuniary jobbing, and those who wished to be noted for their activity. The anxiety of gentlemen for this last species of reputation had its dangers, as well as its advantages, to the service of the public. It was a common thing in the country to hear of some gentleman as "a very active magistrate"—"a man who committed more prisoners than all the other magistrates in the county." *(Hear and laughter)*. Such a justice was very likely to find this act serviceable in his honourable but ambitious career, and to feel a satisfaction in being able, without incon-

venience, to have his labours make a conspicuous figure in the calendar of the assize, and in the discussions of the grand jury. Other persons would be more for a job than for glory—looking to the fees rather than the honour; but each disposition would see the convenience of sending as many people to prison as possible. He recollected a case in a town in the North, which was inhabited (as far as the lower orders were concerned) by numerous parties of Scotch and Irish. These excellent persons regularly fought, in large companies, in the streets, on every market-day, and fought double tides on fair-days. The custom of the justices was, on these occasions, to take up their position formally for the afternoon, with a competent supply of punch and walnuts; and as the rioters were brought before them, each swearing an assault against his opponent, their worships regularly avoided the necessity of balancing the niceties of evidence, by committing both the parties. (*Hear, hear, and laughter.*)

Now some of these details were ludicrous; but the general question was a most serious and a most important one, because these facts showed the manner in which justice was administered to the people out of the immediate view and control of the Courts of law. It was through the magistracy, more than through any other agency, except that of the tax gatherer, that the people were brought directly into contact with the Government of the country; and this was the exhibition of justice and consideration with which, when they approached it, they were treated. These magistrates, with no one circumstance to fit them for the discharge of legal duties, incurred no responsibility, and were subjected to no restriction. The Judges of the land, chosen with the labours of a life previously devoted to the acquirement of competency, were responsible for every word and act, and subject to every species of restriction. They were selected with the most anxious caution for every circumstance of high character and of profound knowledge; and yet they were incapable of pronouncing a single decision from which an appeal did not lie to some other tribunal immediately about them; while the county magistrates, taken from the community at hazard, subject to no responsibility, unless for conduct which it was next to impossible to prove, and incapable of being removed from their places, unless by a verdict establishing direct criminality against them,---from the decisions of these persons there was no appeal, unless for some informality in the letter of their proceedings, or upon a case submitted by their own will, and with their especial permission (for the thing could be accomplished under no other circumstances) to the Court of King's Bench. These were the circumstances to which, in the first division of his subject, he had desired to call the attention of the House. He could have been anxious to have accomplished his object more shortly, but he had found it impossible to do so; and he must trust to the candour of the hon. members, in considering the importance of his statements, to pardon their prolixity. He was now about (the hon. member continued) to address himself to that portion of his subject which involved the discussion of the administration of justice in those Courts of law in which he himself was accustomed to practise. And although he regretted to have been compelled to trespass so long upon the time of the House, yet he could not, even now, promise a very early conclusion. And, first of all, addressing himself to the state of the common law, he would appeal to men of every profession, whether it would not be convenient, that whatever the law might be upon any particular subject, it should be the same in all parts of the kingdom? Was it likely to be useful, or could it be necessary, that, by crossing a river, we should get to a

place where the whole of a man's children equally inherited his estate? —that, by going down a few miles to Brentford, we should reach a locality in which specific provision was made in favour of the youngest branch of a family? and that, by turning as many miles in another direction, we should be in a county where the inheritance of real property belonged peculiarly to the eldest descendant? Was it fit that such a multitude of customs, so various and contradictory, most of them the remnants of a barbarous age, should be allowed to remain in a country subject to the same general government? To go through the many absurd instances of particular customs which might be cited, would be a greater trespass on the patience of the House than he was disposed to make, but some of them he would mention. In one manor, the property of the copyholder was allowed to pass by will; in another, that mode of conveyance was not admitted. He would admit that an improvement in the law respecting copyholds had been introduced by an hon. friend of his—the greatest improvement, perhaps, which had been made within the last two years,---but still there remained many absurd customs which were locally binding, but which ought to be abolished altogether. In some manors, the validity of wills bequeathing copyhold property was not admitted, if they had been made more than two or three years before the death of the testator; so that it was necessary for a party to renew his will every two or three years. Again, in some manors, the eldest daughter succeeded to the property in the same way as the eldest princess, in default of heirs male, would succeed to the crown of England; in others, the succession was by all the daughters equally. In one manor, the widow had her dower of one-third of the property; in others, she came in for her free bench, and took one-half; and, in some, she came in to the prejudice of the male heir. In some there were fines and feriots; but, in all, the customs affecting the descent and transmission of property were as various as the *droit de coutume* in France, where, in almost every one of three hundred villages, the customs varied. Was it right, that such customs should be allowed to continue, or that they should be allowed to stand, in opposition to the general principles of the common law, affecting all other parts of the country? Was it right, that in London one law should be allowed to prevail for recovery of property, or for attachment of property, in the hands of third parties, different from that which was in force in all other parts of the kingdom? Those various, inconsistent, and not seldom contradictory, customs, with which very few could be acquainted, were so many traps for the unwary: they were a hindrance to the conveyance of property; often a material check to commerce, and an impediment to the free circulation of money. It was almost impossible for a man possessed of copyhold property to borrow money upon it. As the law now stood, very few, if any, would be found to lend their money, upon the security of such property. Copyhold property was not liable, after the death of the owner, even for his bond debts. Freehold property was absurdly enough exempted from the payment of simple contract debts after the death of the owner; but copyhold was not liable for debts of any description, bond or simple contract: so that, in the hands of a man who wanted to raise money, it was, however valuable in other respects, absolutely worthless. Was it, he would ask, too much to expect, that after a lapse of so many years, during which those absurd customs had been allowed to prevail, some remedy should at length be applied?

Having thus pointed out the absurdity of many local customs, he would

now show that the law was not in its administration always the same to persons. He would show that it was not true, as was asserted by some of our writers on the laws of the country, that the Crown and the subject came into Court on equal terms. The law said they were equal; but he would show that they were not, but that in a variety of important cases the subject came into Court under serious disadvantages. Blackstone said that the King could no more seize the estate of a subject than the subject could that of the King; or, if the authority of the King were used in taking the property of a subject, the subject had his remedy by writ or petition of right, or by *monstrans de droit;* "for," said Blackstone, "the decent presumption of law was, that as the Crown could do no wrong, it would, on hearing the case stated fully, give its decision according to justice." He (Mr. Brougham) wished the learned commentator had not left it to be shown that all this alleged equality was a mere matter of fiction. Now, what he would show was, that all this alleged equality, and the protection supposed to be derived from the petition of right, existed only in the books in which they were mentioned, but undoubtedly not in the practice of the courts of law; for this very writ, or petition of right, could not be used by the subject without the *fiat* of the Crown; and unless this were granted, all the other steps taken by the party aggrieved would be only so much labour lost. The granting or withholding of the *fiat* was in the breast of the Attorney-General; and if he should refuse it, the party had no remedy but to impeach the Attorney-General, and take all the chances of that very uncertain experiment. It might be said, that this was a matter which seldom happened; but why should it be left to the breast of any individual to refuse a writ of this kind? The power he exercised should in this case be merely ministerial, and the obtaining the *fiat* for the writ should be as much a matter of right as the obtaining any of the other processes sued out of our law courts. He would mention one case in illustration of his argument. A gentleman of his acquaintance had obtained from the Crown the grant of an estate on the failure of heirs, but soon after the grant a claim was made on the part of another, who alleged that he was the rightful heir of the original grantee. A case was laid before him (Mr. Brougham) and a learned friend of his, in the Court of Chancery, and they were instructed to draw up a plea, and to apply for a writ of right. Application was accordingly made to the Attorney-General for his *fiat* in the usual way, but he refused it, and told the party that, as a sufficient number of years had not elapsed, he must proceed by ejectment. It was answered, that the claimant had chosen to proceed by the higher mode, and that the *fiat* ought to be given as a matter of course; but the answer was still the same, and the claimant was left to seek his remedy by ejectment. The consequence was, the suit of the claimant was not prosecuted, and he (Mr. Brougham) must say that the refusal was a great hardship to his client. He could state conscientiously, that the case of the claimant was as good a one as he had ever seen. It was one of pedigree, and, in his opinion, the proofs offered were very strong. He did not mean to say that it was one which could not be answered; but such as it was---and this was the hardship he complained of---the claimant was not allowed an opportunity of trying it. (*Hear, hear.*) After this, would it be contended, that the Crown and the subject came into court on equal terms, or could it be doubted that there was any thing but a mockery in the assertion of Blackstone on this subject? There was another case, in which the Crown did not even pretend to be impartial, and he would mention a few of its

effects. In the first place, a person who demurred to the law, was obliged to admit the facts alleged against him, and could not go back from that admission. With respect to the Crown, no restrictions of a similar kind were imposed; and he understood, that, in the Court of Exchequer, a suitor could not except to the answer of the Attorney-General to a bill, on the ground of its being insufficient, but any subject would be liable to have such an exception taken to his answer. A case which he argued in the Court of King's Bench, and in which he was defeated, was another instance of the inequality of the situation of a subject with respect to the Crown in a court of justice. In that it appeared that, no matter where a cause of action arises, whether in Middlesex, or in York, or in Cornwall (as was the fact in the cause in question), the Attorney-General, on the part of the Crown, had the right to remove the case at once into the Court of King's Bench, and have it tried at bar before the four Judges. Let the House consider what must be the inconvenience to parties to bring witnesses such a distance—the loss in point of expense. This loss might, no doubt, be considered by the Crown, and some allowance made for it afterwards; but was it no inconvenience to have the cause removed from a place where the party was well known, and where his witnesses could be known, to one in which he and they were strangers? This inconvenience could not accrue to the Crown, for the Crown was just as well known in London as in Cornwall, and not less likely to be served in the former place than the latter. Another instance of the inequality between the Crown and a subject at issue in a court of law was, that a subject might not withdraw the record where the Crown was a party, but the Crown could, at any stage of the proceedings, before the verdict was given. An instance of this occurred within his own knowledge, in the Court of Exchequer, where the Attorney-General allowed a case to go to the jury, and, while they were deliberating on their verdict in the jury-box, having some misgivings as to the probable nature of the verdict, he withdrew the record, and thus removed the case at once from the jurisdiction of the court. Another circumstance might be mentioned in support of his argument: it was, that the Crown considered itself above receiving costs, and therefore also above paying them, when verdicts were against it. The reason of the principle could be very easily traced. It was established at a time when the Crown was very differently circumstanced with respect to the people, from what it is at present. It was at that period dependent chiefly on its own private revenues, wholly under its own control; and its interest in pecuniary matters might be said to be distinct from those of the people. Under those circumstances, it might be said, that it would be above receiving costs in an action with a subject; but why this should exempt it from the payment of costs when the verdict went against it, he was at a loss to discover, for the things were as different as possible. In special jury cases, the parties opposed to the Crown could not pray a *tales* without the warrant of the Attorney-General acting for the Crown.

Thus the power of denying a trial was vested in the very party whose interest it might be that no such trial should take place, and who very probably would be disposed to withhold the permission in proportion as the opposing party was anxious to obtain it. I will mention (continued Mr. Brougham) an instance of this which occurred in my own practice. An action was brought against an individual in the Court of Exchequer: *I was engaged* for the defendant, and in the course of my cross-examina-

tion of the principal witness for the prosecution, I elicited from him sufficient to throw a suspicion of perjury. The jury, however, thought that some credit was due to his evidence, enough at least to incline the balance in favour of the Crown, and they accordingly found a verdict against the defendant. In the next case the same witness was also the person on whose testimony the case of the Crown rested, but my learned friend, Mr. Sergeant Jones, to whose great talent, learning, and experience, I cannot pay too high a tribute, put him to the test of a severe cross-examination, in which he broke down. The superior skill of my learned friend, aided perhaps a little by his experience of the preceding case, succeeded with the jury, and the suspicions of perjury excited in the former case were now turned into reality. A verdict was given for the defendant. In consequence of this verdict, a prosecution was instituted against the witness (Mead) for perjury, and, altogether, eighteen indictments arose out of that proceeding against Mead and others. The bills were all found, but the whole of the cases were removed at once by *certiorari* into the Court of King's Bench, and all of the mmade special jury cases—for the Crown had that power without the concurrence of the prosecutor. One of them was tried, and the witness Mead, now the defendant, having been a witness for the Crown, was now, as is usual on such occasions, defended by the Crown. He was, however, found guilty. The prosecutor was about to proceed with the other cases, but a sufficient number of special jurymen not answering to their names, it became necessary for the prosecutor to pray a *tales*. This, however, could not be done without the warrant of the Attorney-General, and that was at once refused. The consequence was, that after an expenditure of 10,000*l*.—after bringing one hundred witnesses up from York—after all the labour, expense, and anxiety of the prosecutor (the former defendant in the Exchequer),—he was deprived of the means of bringing the parties whom he accused to justice, and at the same time was ruined in the attempt. The seventeen indictments against the other parties of course fell to the ground.

The unfortunate farmer (Lowe), on whom such ruin was brought in his attempt to obtain justice, was fated to lose his life in this unfortunate cause. The defendant Mead had obtained a rule for a new trial; and while the proceedings were pending, a fracas took place between him and Lowe (for the parties lived in the same town). Offence was taken at a song sung in allusion to the trial, and the result was that Mead shot at his opponent, and killed him on the spot. He was tried for the murder, and found guilty of manslaughter only, it being considered that Mead got some provocation; but to show that the Judge viewed the case as one of much guilt, I may mention that Mead was sentenced to two years' imprisonment. This, Sir, it will be admitted, is a bad case, and one of much hardship; and I am justified in saying that the whole arose from the refusal of the warrant of the Crown for a *tales*. Shall I be told, after this, that the Crown and the subject are on equal footing when opposed in courts of justice? While other countries, which said much less in their own praise than we were in the habit of doing, but did much more to deserve it, were taking steps to remove such inconsistencies and absurdities from their systems of jurisprudence, were we to stand still and allow them to remain, and attempt no means to remedy the evils they occasioned? The case he had mentioned, though a bad one, was one which, bating the murder, might happen every day; but even happening only once, was it not enough to prove the assertion he had made, that the

Crown and the subject were not on the same footing in our Courts? In no case, he would repeat, had the latter the same advantages as the former. Having thus cleared the way, he would now come to point out briefly the means which might be adopted for preventing unnecessary suits, and for limiting the duration and expense of those which were necessary. In the other parts of his remarks, he would advert rather to the general heads than go on to the more minute details. In the first place, he would remove all means of oppression by means of suits at law, by cheapening all legal proceedings; and he would render them much less harassing and vexatious, by promoting, as much as possible, expedition in the progress of a suit. His next principle was, that no proceeding should be allowed which went only to the profit of the Court or the practitioners, and which might be done as matters of course; but all should be supposed to be done by the party himself, which could be done at present by application to the Court. In the third place, he would not send a party to two Courts, where one would be sufficient, or oblige them to go to a bad and dear Court, where application might be made to a cheap and expeditious one. Fourthly, he would not place the *onus* of proof on the party who had a fair presumption of right; but, as in case of bills of exchange, mortgages, and things of that sort, where, as in the Scotch law, the plaintiff was presumed to be so much in the right as to get all he asked, unless the defendant was enabled to show cause to the contrary. In the fifth place, he would allow parties who had prospective interests to defend, to institute (as was permitted in the law of Scotland)---to institute declaratory suits, by which he might compel parties who had, or conceived they had, claims, to urge them or be barred in future. This would be found a most useful practice, and the party by whom the suit was instituted, might pay the whole or part of the costs, as the Court should determine. In the sixth place, he would abolish all obsolete proceedings in law. These were, for the most part, a trap to the unwary, and afforded a ready means by which the incautious might be made tools in the hands of the designing and dishonest. Of these obsolete proceedings, he would instance the absurd one of wager of law. This kind of defence might be set up in cases of *detenue*, or of simple contract debt. In that case, all the defendant had to do was, to come into the Court and swear that he did not owe the money, and bring along with him eleven persons who should swear that they believed him in what he swore. They might be eleven strangers to the party claiming the debt, and they would be therefore less likely to know any thing about the matter, and could safely swear as to their belief of defendant. A case of this kind was some time ago brought into the Common Pleas, when some of the oldest practitioners were at a loss how to treat such a defence; and were about to demur to it, so little were they practically acquainted with that which was still a legal defence to an action for debt.

Now, this he would abolish altogether. He would also, without the least feeling of remorse---without thinking for a moment about the pain it might give to several of his learned friends—without caring a rush for the immense mass of antiquated learning which it would render useless, or shedding a single tear over the piles of musty records which it would sweep away,—without being moved by any of these considerations, he would at once and for ever abolish the obsolete, absurd, and most ridiculous system of fine and recovery. (*Hear hear.*) If ever there was any one practice in our civil code more absurd than another, it was that. He begged to be understood

he did not mean to do away with cutting off the entail; but he would far remove the absurd, extravagant, and, what was not less objectionable to the party in the case, most expensive legal mummery by which that step was accomplished in one of our courts of law. If a man had an estate in fee, he might sell it, or will it, or convey it by deed of gift, to whom he pleased; but, with an estate in tail, which he meant to dispose of, he must go to the Court of Common Pleas; and there, by paying a variety of heavy fines to the Court and the Officers, he might do all he required, and effectually bar the rights of all parties in remainder. But why might he not be allowed to accomplish his object, if it were a fair one, without going through all that ridiculous ceremony, and paying those heavy fines? In bankruptcy, all those forms were dispensed with, and the entail was cut off, and the estate sold for the benefit of creditors. Why should not this be done for the honest landowner, of which a perhaps dishonest tradesman was allowed to avail himself.

The learned gentleman, after described the absurd forms through which a woman was obliged to go in suffering a recovery with her husband, or in barring her dower, and ridiculing the still more absurd practice of making the crier of the court, as the vouchee in cases of fine and recoveries, the only party from whom, by a fiction of law, the parties barred could claim compensation, went on to state, that in the case of the lady he would appoint a legal or equitable guardian, to see that she was not induced to act in her own wrong. He also observed, that he would do away with contingent remainder, in the form in which they were now set out. He would allow a man to say he left his estate to his son, and after him to his son's son; but this should be in simple terms, which would not serve, as was the case of the present form, to puzzle and confuse the unwary, and often to cause them to defeat the very ends they had in view. He would propose, as another improvement, to take away from the Court of Chancery its jurisdiction in trusts, mortgages, &c., by extending the statute of uses. In dealing with this class of cases, the court of equity decided purely on the principles of common law. The court of equity, however, was not so well able to decide these cases as a court of common law; and the consequence was, that every term two or three cases were sent from the former to the latter for its opinion on the law. It was said that a court of common law had not the means of dealing with these cases, because they resolved themselves into matters of account. But the Court of Chancery, in itself, had no peculiar property of unravelling questions of account. This duty was performed by its appendage, the Master's office. *(Hear.)* If the number of Masters were increased in the Court of King's Bench, and if arbitrators were appointed, before whom the parties should come in the first instance without counsel or attornies, to have the subject talked over, to be shown the strength and weakness of their several cases, that Court would be quite as competent to decide questions of account as the Court of Chancery. The equitable jurisdiction of the Court of Chancery would thus be ousted in nine cases out of ten over which it had gradually extended itself, owing to the defects of the courts of common law. The Court of Chancery would then be left to its original jurisdiction in cases of pure account, idiots, infants, and long trusts, which no court of common law could deal with. It was hard that an individul should be driven to two actions, ejectment and mesne process. His next object was to diminish the number of suits,—to allow only those to be brought which ought to be brought, and to provide that those which were brought should be terminated in the shortest possible

space of time, and with the least possible expense. For this purpose, parties should have an opportunity of stating their case before arbitrators appointed by the Court. Much good would result from this practice, and it would always tend to keep open the door of reconciliation. Our Saviour had wisely observed—"Agree with thine adversary whilst yet thou art in the way." That recommendation should be constantly set before the eyes of suitors. It was, in original intention, though not in effect, acted on in the practice of imparlance. Whatever tended to bring a party to his senses as soon as possible, ought to be resorted to. *(A laugh.)* Above all things, it was of the greatest importance that a party should at the earliest moment be brought to the knowledge of his adversary's case. If parties were disposed to be litigious, the interests of both differed from the interests of justice. It usually was the practice for practitioners to determine upon the prosecution or defence of a suit, and he did not always value the interests of his client so much as his own.

The object of a judge in a court of law ought to be to make each party come out with the whole of his case as soon as possible. In Scotland, no man could produce a written instrument in a court of law, unless he had some time before shown it to his adversary. In England the practice was different, and much vexation and injustice was the consequence. As a means of facilitating compromises, he would propose that parties be allowed to pay money into court in cases of unliquidated damages, and likewise to make a tender in cases of injury to persons and property, as was done in the case of justices and others under the statute of George II. With the view of shortening the duration and abridging the expense of suits, and doing justice at the same time, why should we not adopt some of the useful rules of foreign nations, which accorded with the spirit of the English law, and would prove so beneficial to all, except the profession to which he had the honour to belong? In this matter he spoke disinterestedly. There were very few persons who made more money by the law than he did. Few persons shared more largely in the benefits which resulted from its abuses. If the reforms which he proposed were introduced, a whole class of cases would be banished from the courts, which only benefited counsel, attorneys, and the officers of the court, and worked the ruin of the plaintiff and defendant. He would ask any man acquainted with law, whether half the number of cases at present standing on the paper of the King's Bench would have appeared there if the parties had the opportunity of going before a sensible arbitrator, as was done in France, in the Dutch maritime courts, and in the Danish courts. The average amount of the money in dispute in the causes in the Bench paper was 30*l.*, and the average expense of each cause was 100*l.* It came to his knowledge, that the average amount of money in dispute in fifty actions tried at the last Lancaster assizes was 50*l.* This never could have happened, if the parties had been afforded an opportunity of having some quiet conversation with each other.

The existence of such facts as these proved the necessity of appointing public arbitrators, before whom men might go before their passions were worked up, and their pockets worked low. *(A laugh.)* He now came to the commencement of the suit, with respect to which he had three propositions to offer: first, to prevent the debtor from wilfully absenting himself, and thereby causing delay; secondly, to give the debtor notice of the cause, that he might be able to defend himself if in the right, and to yield if in the wrong; thirdly, to give him no unnecessary inconvenience, till he be actually found indebted, consistently with due security, to the

creditor. At present it was the custom, first to presume the debtor to be in the wrong, then to arrest him and to throw him into gaol. He was given to understand that the creditor's power was often abused for electioneering purposes. A candidate was sometimes arrested for a debt which he had contracted within a few days, and his ability to pay which no man could doubt. It was sometimes difficult or inconvenient to procure bail. He had heard that when a gentleman was arrested at the West end of the town, he sometimes sent for his butcher or baker to bail him. (*Laughter.*) Though this practice might have its conveniences, it was not quite the right thing. The gentleman could not afterwards, with a very good grace, abuse the butcher's bad meat, or complain of the baker's bread. The system, however, operated more grievously upon the small tradesman: he had not the same facilities of procuring bail as persons in a higher rank; and if imprisoned, as was most likely to be the case, he sometimes never held up his head again, or was not like the same man as before. Why should a man be arrested on mesne process at all? Was it likely that because a 50*l.* debt was sworn against a man, that would be sufficient to induce him to leave his house and home, his wife, his children, and even his country? Some men might act thus, but their conduct formed the exception, and not the rule. If the law on this subject were reformed, tradesmen would be less ready to give to suspected, needy, and extravagant men credit, for which those who did pay honestly were proportionably taxed. (*Hear.*) Why should not the writ be left at a man's house, and require him to find security only when it should appear that he was about to fly. This was the practice in Scotland, where people had the reputation of being sufficiently wary. He now came to that point of the law which supposes the parties to be in court, and calls on them to state the claim on one side and the defence on the other. This was a part of his subject which he approached with great distrust in the presence of his learned instructor (the Solicitor General), by whose knowledge and experience he had greatly benefited. Lord Coke was of opinion, that there was something extremely delightful in the practice; for, speaking of the word *placita*, he said it was derived from *placendo, quia bene placitare super omnia placet.* (*A laugh.*) Lord Mansfield was also an admirer of pleading, but his praise was more moderate. "The rules of pleading," said he, "are founded on good sense." So, indeed, they were originally, but subtlety had put aside good sense, and the legislature, by allowing the general issue to be pleaded, had assisted in lowering the character of pleading. In his opinion, every departure from the original strictness of pleading was not only injurious to the pleaders themselves, but also to society. His great object was, that the parties should declare their claim and defence as early as possible, and that, in so doing, all repetition and unnecessary statement should be avoided. These were the principles on which the ancient pleaders bottomed themselves; but the last century and a half had made great havoc on them.

The first count in the declaration ought to convey precise knowledge of what the action was about; but according to the present practice that might not be done. In an action of account, the declaration merely states, that the action is brought to recover money had and received for the use of the plaintiff. This same declaration may be employed in seven actions, each of a different nature;—first, where money has been paid by one person to another, for the use of the plaintiff; secondly, where money has been received on a valuable consideration or a contract not executed (this

would include all cases of contract); thirdly, money paid in mistake and retained; fourthly, money paid by one person to a stakeholder in consideration of an illegal contract; fifthly, money paid to a revenue officer for releasing goods; sixthly, on fees of office (the assize of office being now obsolete); lastly, to try a landlord's liability. Again, in cases of trover, the same form of delaration served for seven cases, as various in their natures as could well be imagined. The declaration stated that the plaintiff was possessed of a gun, which he had accidentally lost, and which had come into the hands of the defendant, who had converted it to his own use. The same declaration served for the following cases:---first, a gun lost by one person, found by another and converted to his own use; secondly ---[this case we could not hear, owing to an interruption in the gallery];--- thirdly, a gun deposited and refused to be restored; fourthly, a gun stopped *in transitu* on account of bankruptcy; fifthly, an action brought by the assignees to recover it; sixthly, an action against the assignees to try the bankruptcy; seventhly, an action against the sheriff to try the validity of an execution. In actions of trespass of every kind, the language of the declaration is the same.

He would not repeat the mode in which the various counts were framed, as his objection was not so much to the rigmarole which they contained, as to the circumstance that all declarations in actions of trespass, whether the trespass was committed in the taking of goods, or in the seduction of a man's wife, servant, or daughter, were drawn up in the same way as they were for trespass committed in the assault on a man's person. They told the defendant nothing—they told the counsel nothing—they told the judge nothing. It might be said that the defendant must know the cause of action himself; but that did not always follow. There was, however, one person who must know it, and that was the plaintiff. The plaintiff, he repeated, must know it, and ought, for the satisfaction of all parties, to state it distinctly. The next point to which he wished to call the attention of the House was the declaration in the action of trespass *quare clausum fregit*. In that action the description of the wrong done was more than ordinarily specific. The damages in the declaration were laid at 1*s*., as the object of the action generally was to try a right. In all other cases, where a knowledge of the wrong suffered was material, the court, the counsel, and the suitor, were left equally in the dark; but in the case to which he had just alluded, where a knowledge of the circumstances under which the trespass was committed was immaterial, every thing was told to them of which it was important that they should be informed. The next stage to the declaration in every action was the plea; and here he must observe, that if the plaintiff told the defendant nothing in his declaration, the defendant, in his turn, told the plaintiff nothing in his plea. He maintained, however, that the plaintiff ought to be informed of the nature of the defence which the defendant intended to set up at the trial, if for no other reason, at least for the prevention of the frauds and perjuries which so often took place under the present system. Perjury was encouraged by the vagueness and indistinctness of modern pleading; and it was notorious to every gentleman who practised in Westminster Hall, that when parties fought on the record, they too often fought by perjury. The hon. and learned gentleman entered into some statements in illustration of this part of his subject, which were quite inaudible in the gallery, from the low tone of voice in which they were spoken. When he was next audible, he was observing that in a general

indebitatus assumpsit, which was in the nature of an action of debt, the general issue was *non assumpsit.* Now, under that plea, no less than eight different defences might be set up as a denial of the contract,—payment, usury, gaming, infancy, accord and satisfaction, release, and coverture. All these pleas were stated in the self-same way. So, too, in an action of trover for a gun: the defendant, under the plea of "not guilty," might set up as a defence that he was a gamekeeper, and had taken it by virtue of the qualification act, or that he had a lien upon it for passage-money, and had therefore a right to detain it, or that he had received it as a deposit, and was entitled to keep it. All these defences had been absolutely made, and each of them had been concealed under the sweeping plea of "not guilty;" so that every body would, he thought, agree with him, that if the count taught the court and counsel little, the plea taught them still less. Hence it was, he supposed, that Mr. Justice Blackstone, in alluding to the indistinctness of special pleading, and with a full knowledge of the generality of all declarations, and of all pleas in assumpsit, in trespass, and in trover, concluded his book upon actions with this just, and eloquent, and appropriate panegyric upon the mode in which they were conducted according to the law of England:—"This care and circumspection in the law,---in providing that no man's right shall be affected by any legal proceeding without giving him previous notice, and yet that the debtor shall not by receiving such notice take occasion to escape from justice; in requiring that every complaint be accurately and precisely ascertained in writing, and be as pointedly and exactly answered; in clearly stating the question either of law or of fact; in deliberately resolving the former, after full argumentative discussion, and indisputably fixing the latter by a diligent and impartial trial; in correcting such errors as may have arisen in either of these modes of decision, from accident, mistake, or surprise; and in finally enforcing the judgment, when nothing can be alleged to impeach it;---this anxiety to maintain and restore to every individual the enjoyment of his civil rights, without trenching upon those of any other individual in the nation—this parental solicitude which pervades our whole legal constitution, is the genuine offspring of that spirit of equal liberty which is the singular felicity of Englishmen." (*Hear, hear.*) The inconsistency of our rules of pleading was the next head of complaint to which he should allude, and which he conceived to be as manifest as their vagueness and indistinctness. Why should a man be allowed to plead infancy under the general issue? If it were right that the defendant should avail himself of such a plea, it was equally right that he should give the plaintiff notice that he intended to use it, in order that he might examine into its correctness previously to its trial. What was a plaintiff to understand when a defendant first pleaded that he had never made a promise to pay, and then in the same breath stated that he was an infant at the time he made it? Next came the multiplicity of counts and pleas. A man laid his claim, which in itself, perhaps, was perfectly simple, in ten different ways—throwing, as it were, his drag-net on the waters, to catch every thing which might fall within its meshes. The pleas were in consequence framed to meet ten different counts; and hence arose a multitude of pleas equally inconsistent with the truth and with each other. Take, for instance, the case of a debt on bond. The first plea in such an action would be the general issue *non est factum,* whereby the defendant would deny the bond being his deed; the second would be solvit ad diem—he

paid it on the day mentioned in the bond; the third would be *solvit ante diem*—he paid it before the day; the fourth would be *solvit post diem*—he paid it after the day; and the fifth, performance and a general release. Now all these pleas were so clearly and undeniably inconsistent with each other, that it was quite unnecessary for him to say a word respecting them. What could a plaintiff expect, when a defendant first asserted that he had never executed the bond on which the action was brought, and then asserted, in the next moment, that he had not only executed it, but had moreover paid it off? Where pleas were consistent with each other, it might be well to let them be pleaded in full abundance; but where they were not only not consistent, but absolutely destructive of each other, it would be a good rule to establish that such pleas should not be put upon the record. Whilst he was upon this part of his subject, he would again recur to certain matters which had come within the sphere of his own personal knowledge in the profession.

He recollected that at one assizes at York, it was his duty, as junior counsel, to open a declaration, in an action which was brought to enforce the payment of a wager laid upon the life of Napoleon Buonaparte. He told the jury, that the defendant, in the year 1802, in consideration of one hundred guineas, agreed to pay the plaintiff a guinea a-day during the life of one Napoleon Buonaparte. He then amused the Court and the audience by stating, that there was another count, in which the wager was averred to be laid on the life of a second Nepoleon Buonoparte, and a third count, in which it was averred to be laid on the life of a third Napoleon Buonaparte. Now, by all this verbose tautology, there was nothing gained to the suitor, but there was much gained to the members of the profession, for it tended to make the suit more costly. Before the statute of the 4th and 5th of Anne, no man was allowed to plead double, except under a protestation; but by that statute it was enacted, that he might, with leave of the Court, plead two or more distinct matters or single pleas. He must now inform the House, that though that leave was formerly granted by the Court as matter of discretion, it was now generally given as a matter of course. There was, however, a fee to be paid to the Court for that leave, and a fee to be paid to counsel for signing the rule to obtain it. He believed that the Judges were now fully aware of the folly of which their predecessors had been guilty in establishing such a practice. The mischief of it was great and undeniable. He believed in his conscience, that many an attorney's clerk, who afterwards proceeded to still greater frauds, began his career of crime by defrauding counsel out of the half-guinea fee, which was paid them for their signature of such rules. It was not necessary that they should themselves sign their names, and he believed that a knowledge of that fact among attorneys' clerks and barristers' clerks seduced many of them to commence a course of petty embezzlement, which led to larger peculations in the long run, and ended in sending them as convicts to seek their fortune in another hemisphere.

There was another inconsistency in our system which he could not allow to pass without notice. A defendant might plead, but a plaintiff could not reply, many matters. For instance, in an *indebitatus assumpsit*, if a defendant pleads, first, that he never made any promise, and next, that he was an infant when he made the promise, the plaintiff must either admit the infancy and set up a subsequent promise, or if not, deny the *infancy altogether*, and re-affirm the original promise; for he cannot both

deny the infancy and set up a subsequent promise. Now he would ask the House, why, if the defendant were allowed to plead several matters, the plaintiff could not be allowed to reply several matters? There must be some limit, he allowed, set to the matters alleged in the replication; but surely there could be no harm in allowing the general issue to be met by as general a denial. The next stage in an action was the demurrer, which was an issue, not upon a matter of fact, but upon a matter of law. By demurring, a party was obliged to confess the facts to be true as stated by the opposite party, but denied that by the law arising upon those facts any injury has been done to the plaintiff. Nothing could be more absurd and foolish than the rule which called upon a party, if he denied the law as applicable to certain supposed facts, to admit those facts before his demurrer could be made ripe for decision. Why, every man was demurring every day of his life! Suppose that he was accused of having uttered a calumny against the reputation of another party on a given day, at a given place. Surely he might be allowed to say, "I never was at that place in my life, and therefore it is impossible that I should have uttered the calumny against you which you represent?" Why, then, might he not on a point of law be permitted to say, "Admit, for the sake of argument, that I was there, still I say that the consequences of which you complain did not follow?" He repeated, that a contrary rule was both impolitic and unwise. He admitted that if any mischief was occasioned by the present practice, there was an opportunity of remedying it, after the matters were placed on the record, by alleging error in it. That observation led him to remark that he would allow all formal errors to be amended even at the very last stage of the cause. No one should be turned round on a mere variance,---no one should be defeated on a mere verbal mistake, as it was his lot to be defeated in an indictment for perjury, in which he had been recently engaged. It was a case in which the jury was empanelled, the witnesses examined, and much evidence received, before it was discovered that there was a variance between the affidavit on which the perjury was assigned, and the copy of it which formed part of the record, which was fatal to the indictment. In the affidavit the word grandmother was used: in the record the syllable "grand" was omitted, and only the two last syllables "mother" were inserted. Owing to that slight error, all the trouble of the Court, and all the expense of the prosecutor, were rendered totally useless and unavailing. In 99 cases out of every 100---indeed he might say in 999 cases out of every 1000, in which parties were turned round upon variances,---the variance was not greater than that which he had just mentioned to the House. The improvement which he would suggest, would be to allow nobody to be turned round upon a variance, except on the discretion of the Judges. He would go further than this, and would say that nobody should be turned round for want of a proper stamp being affixed to any instrument which they might be compelled to produce in the course of a trial. The learned member then stated the manner in which Earl Dudley had recently been nonsuited in an undefended cause, because it was stated that the instrument on which he rested his claim contained more words than the stamp affixed to it warranted. At the trial of the cause it was not disputed that the words were more in number than the stamp covered; but it was afterwards found out that the defendants had counted the words wrongly, and that they fell short of the number mentioned in the Stamp Act. He thought that in such cases some protection ought to be afford

to plaintiffs; and he would therefore allow the Judges to say to them, "You shall pay a 20*l.* penalty, and have your instrument stamped and made available in Court, instead of only paying a 10*l.* penalty, as you would have to pay, if you took it to the Stamp-office."

Let not the House suppose that the grievances which he had just been describing as emanating from the present system, were imaginary and theoretical grievances. He could assure the House that they were not so; but were in many cases actual grievances, amounting almost to a positive denial of justice. He held in his hand a letter from an eminent practitioner in the law, in which the effect of them was feelingly and forcibly pointed out. The widow of a Welsh clergyman was obliged to bring an action upon a mortgage-bond for the payment of the mortgage-money at a given day, and interest in the mean time, and for performance of the covenants of the mortgage-deed. She might have foreclosed by a proceeding in equity; but, instead of doing so, she brought an action of debt of the simplest possible kind, both in its nature, and in the form of the proceedings; and the House should now hear from the eminent practitioner himself, what was the progress and termination of that action:—"The defendant was a member of Parliament, and some delay, as is usual with such defendants, took place in enforcing an appearance. When the declaration was delivered, the defendant, of course, demanded oyer of the bond, and, that obtained, made as many applications as the Judge would allow for further time to plead. At the expiration of this period he pleaded—1st, *Non est factum*---2d, *Solvit ad diem*---3d, *Solvit ante diem*---4th, *Solvit post diem*---5th, Performances. It is needless to add, all these pleas were pure legal fiction. The plaintiffs in their replication took issue on such pleas as concluded to the contrary, and assigned breaches of the condition, according to the statute. The breaches assigned were, non-payment of the principal---non-payment of the interest---and non-performance of the covenants of the mortgage-deed. The defendant, for the purpose of splitting the second into two issues, and thereby creating the delay of an issue in law to be tried before the Court *in banco*, and an issue in fact to be afterwards tried at *Nisi Prius* before a jury, demurred to the last assignment of breaches---a sham demurrer for delay. The plaintiffs joined in demurrer, and made up and delivered the paper-book and demurrer-book. The defendant, in order to entitle himself to bring a writ of error for delay, without giving bail, then suffered judgment to go by default, for not returning the paper and demurrer-book. The consequence of this was, that all the pleas, replications, rejoinders, and demurrer, became useless, and were struck out of the record; and the plaintiffs had to execute a writ of inquiry before the Chief Justice, according to the statute of William III. c. 2. sec. 8, to assess damages on the breaches suggested. But these proceedings had answered the purpose of harassing the poor defendant with useless and expensive litigation, swelling the pleadings from five folios to 118 folios; and they had already accomplished much delay, having occupied four terms: the bill was filed in Trinity Term, the pleas and replication in Michaelmas Term, the demurrer and joinder in Hilary Term, and the final judgment was obtained in Easter Term. The defendant then brought a writ of error, without the slightest pretence of actual error; and that proceeding, of course, delayed the plaintiffs four terms longer. All this was necessarily attended with expense, which might have been grievous to a poor person, as the party in this case was. The costs of the judgment were taxed at 80*l.* 4*s.*, and the costs in error at 19*l.* 10*s.*, making together

99*l.* 14*s.* for the costs, and two years for the active prosecution of *an undefended action*, in which the length of the declaration was five folios! Comment on such a case would be a waste of words." "So tender and circumspect is the law of England in providing that no man's right shall be affected by any legal proceeding without giving him previous notice, and yet that the debtor shall not by receiving such notice take occasion to escape from justice; in requiring that every complaint be accurately and precisely ascertained in writing, and be as pointedly and exactly answered; in clearly stating the question either of law or of fact; in deliberately resolving the former after full argumentative discussion, and indisputably fixing the latter by a diligent and impartial trial; in correcting such errors as may have arisen in either of these modes of decision, from accident, mistake, or surprise; and in finally enforcing the judgment, when nothing can be alleged to impeach it. So anxious is it to maintain and restore to every individual the enjoyment of his civil rights, without entrenching upon those of any other individual in the nation---so parentally solicitous is our whole legal constitution to preserve that spirit of equal liberty which is the singular felicity of the British nation." (*Hear, and a laugh.*) He must now tell the House, that besides the 99*l.* 14*s.* which he had already mentioned, this poor Welsh widow had to pay 30*l.* for extra costs—costs for which she never received a farthing from the defendant, and which she had to defray after he had handed his share of the costs over to the plaintiff's attorney. She was, he repeated, 30*l.* out of pocket in prosecuting an undefended action; and if it had so chanced that the defendant, instead of being a distressed and feeling man,—for he happened to be well-acquainted with the member of Parliament in question, and to know that though a distressed man, he was still a most feeling and conscientious man,—if it had chanced that he had been such a character as was known to have existed in this country, and as had often been represented on the scene,—namely a pertinacious and oppressive man, with a long purse to back him, he would have defended himself at every stage of the action by counsel; he would have gone before the Judges, and had the demurrer argued; he would have had it tried at *Nisi Prius;* he would have brought a writ of error; he would have carried it through the Exchequer Chamber into the House of Lords;—and the costs in that case, instead of amounting to 30*l.*, would have amounted to---he would not say what sum, knowing as he did that costs to the amount of 500*l.* had been once incurred to recover a debt of only 19*l.* "So tender was the law of England in providing that no man's right should be affected by any legal proceeding—so parental its solicitude to maintain and restore to every individual the enjoyment of his civil rights, without entrenching upon those of any other person whatsoever!" (*A laugh.*) There was a case in the first volume of Mr. Justice Blackstone's Reports, which he wondered that the learned author had not recollected before he wrote this extraordinary panegyric on the laws of his country. A gentleman of the name of Robinson in Yorkshire,---he trusted that he was no relation to the illustrious nobleman who had lately filled so distinguished a situation in His Majesty's counsels,---was minded to try the resources of the law. To a declaration that had five counts, he put in seven-and-twenty special pleas, and in the course of the action the pleadings amounted to 2000 sheets, which rendered the Court very indignant. Mr. Justice Blackstone said, that he appeared in person for himself, no one else daring,

to appear for him. He said that the question was an important question of right, and that he felt himself called upon to avail himself of every aid that he could in shaping his defence of it. The Court, on hearing him, ordered the issue to be drawn up by three barristers, who settled it in a quarter of an hour, and in the small space of a quarter of a sheet of paper. Talk of scourging with a red iron! Why, the lash of parchment which is applied to all suitors in our courts of law—that flapper which keeps them awake by the sufferings it inflicts—that goad which drives them on from one stage of misery to another, till it makes them plunge into complete and undeniable ruin,—that is a more effectual rod for scourging a nation than any iron rod which even the ingenuity of a Phalaris could invent. He next came, in the consideration of his subject, to say a few words on juries---a point on which he felt it the more incumbent to touch, because juries had of late been attacked by the reformers of the law. He held them to be a wise and politic, and almost perfect institution; and he said that the more willingly, because he had been represented, very erroneously, to have entertained doubts respecting its excellency.

He spoke as a practical professor of the law, when he said that there was no other mode of trial so admirably adapted to prevent wrong, to secure right, and to eviscerate the truth, as the trial by jury. In the first place, it controlled the judge, who might, not only in political cases, have a prejudice against the defendant, but might also, in private cases, have, what was equally detrimental, a prejudice against a particular counsel. In the second place, it supplied that want of knowledge of the world which judges seldom possessed, and which, from their habits and station in society, it was not decent that they should possess. In the third place, who could so well weigh the value of conflicting evidence as twelve men indifferently chosen, of various habits, characters, and prejudices? Who, moreover, could so well assess the amount of damages which a plaintiff ought to recover for any injury he had received? How could a judge decide half so well as an intelligent jury whether a plaintiff should, for an assault, recover 50*l.* or 100*l.* damages? or, for a criminal seduction, 1500*l.* or 2000*l.* damages? The system looked well in theory, and worked well in practice; it wanted only one thing to render it perfect, namely, that it should be applied to those cases from which the practice in equity had excluded it; and that improvement would be best effected by drawing back to it that jurisdiction which the Court of Equity had taken from it. That consideration brought him to the next point which he intended to press upon the notice of the House—he meant the admission of evidence. He must say, that it appeared to him to be an error to exclude, so rigidly as we did, the testimony of the parties in an action. It was received in all questions of arbitration; why should it be refused in open court? He did not fear that perjury would become more frequent by the alteration which he proposed, though he was rather afraid that it would produce an eagerness which would make men swear, as it was technically called, near to the wind. Here again he spoke from his own experience.

He recollected a case in which a gentleman of large fortune appeared before an arbitrator on some dispute arising out of an electioneering contest. "It was my lot," said Mr. Brougham, "to examine him. I had *got a great number* of his letters in my hand. He was very eager to be *heard in his own cause.* He had quarrelled with his agent, and wished to

explain the cause of the quarrel. I put a question to him: 'Did you never on such an occasion say so and so?' His answer was distinct and ready—'Never.' I repeated the question, and he repeated his answer. I then said to him, 'Do you see what is now resting under my hand?' pointing, at the time, to about fifty of his letters which were upon the table. I then said to him, 'I advise you to pause before you repeat your answer to that question.' He rejected my advice, and not without great indignation. Now those letters of his contained assertions in direct contradiction to what he had sworn. I do not say that he perjured himself,—far from it. I do not believe that he intentionally swore to what was false; he had only forgotten what he had written some time before. Now, had this occurred in an open court, he would have been ruined to the end of time; for he would not have had an opportunity of explaining the matter; he would have been suspected of perjury, when all that he was guilty of was a little too much eagerness, impetuosity, and wrong-headedness. I may be told, perhaps, that the anecdote which I have just quoted makes more against the alteration I propose than for it. I care not whether it does or not. All I have to say is, be uniform in your practice. Why do you refuse to allow a party in a cause to be examined before a jury, when you allow him to swear in his own behalf in your courts of equity, in your ecclesiastical courts, and even in the cases decided by your common law judges in the business of the term? I hope that if the committee of inquiry, for which I am now moving, be granted, something will be done to check the present practice of trying cases on affidavit. If it be right to exclude the parties from giving evidence in their own behalf in one case, it is not right to admit them to give evidence in others. I hope, therefore, that the dissimilarity of your practice in your different courts, will be a ground for yielding to me the examination I require."

The next question which presented itself to his attention was, the great question of how far interest should disqualify a witness. The ancient doctrine upon this point had of late years been much restricted by the construction of our courts of law; and for his own part, he would confess that he could not see any adequate reason why all witnesses of good character and credit should not be admitted as evidence, leaving the question of their credibility entirely to the consideration of the jury. In the case of "Bent *v.* Baker," which was an action against an underwriter on a policy of insurance, the Court held that another underwriter was a competent witness. The rule established in that case was, that if the evidence to which a person swears cannot be given for him in another cause, he is a competent witness, although he may entertain wishes upon the subject; for that only goes to his credit, as Lord Kenyon said, and not his competency. The question in Bent *v.* Baker, was, whether a person who had been employed as broker by the plaintiff in procuring the policy to be subscribed by the defendant, and had afterwards subscribed the policy as assurer, was a competent witness for the defendant; and the Court decided that he was.

He would wish the principle that had been laid down in that case to be still further extended, as he considered it one of great practical use and authority. For let the House look at the inconsistency of their present system? "If I have the most distant interest, even the interest of a shilling in reversion, on an estate of 50,000*l.* a year," said Mr. Brougham, "I am incompetent to give evidence on any point that affects that estate; but supposing that I have a father, ninety years of

age, lunatic, bed-ridden, and quite incapable of doing any legal act for himself, and that he is in possession of an estate in fee simple, and not in fee tail, and that I expect to be his heir, and that nothing can prevent me from becoming so, I may be a witness on any point which affects his estate, and I am competent to swear into the possession of my father an estate of 50,000*l.*, to which, in the common course of events, I must myself succeed in a year or two. I therefore trust that the House will agree with me, that a line ought to be drawn between competency and credit, and that all persons should be admitted to give evidence, leaving it to the jury to determine what dependence ought to be placed upon their testimony. This was rendered the more imperative by the manner in which witnesses were often made competent, by giving them a release of all future actions or causes of action. When a witness has an interest, if he divests himself of it by a release, there is no objection to his competency. Evidence is thus often cooked up for the courts, which, according to the existing rules, is not admissible. A release is given to the witness, which, if he is a man of honour, he returns immediately after the termination of the cause. With regard to the reception of written evidence, he must say that it appeared to him to be no less capriciously received than rejected. He thought as highly as any lawyer ever did of the statute of frauds, and he would go the full length of the learned Judge who said that every line in it was worth a subsidy. Still he was of opinion, that a few lines might be added to it which would render it even still more valuable. The French law required that all contracts for sums above one hundred and fifty francs should be reduced into writing. As everybody could now read and write, he would wish that all contracts to be valid, should be reduced to writing. As the law now stood, the books of a dead person could be admitted as evidence, provided he charged himself with any item, however small. Why so? It was clear that he might enter such an entry into his books to get 500*l.* for his heir. He spoke on this point from a recollection of what had occurred on a case tried at York, which his learned friend, the Solicitor General, would remember---he meant the case of Barker *v.* Wray. In that case, much was suggested to all the counsel concerned in it, to make them think that it would be a useful rule to admit the books of a dead man as evidence, no matter whether he charged himself with any item or not, if it appeared that he had no intention of making them evidence for his heir. The law already opened the door for mischief, and he wished to see whether, by a change in the rule, they could not find some means of counteracting it. He was induced to think that no injury could arise out of such an alteration as he proposed, by the curious circumstance that entries made by a deceased rector or vicar of the receipt of tithes, have been admitted as evidence for his successor, because he was supposed to have no interest to misstate the fact in making an entry which could not possibly be evidence for himself. In the examination of witnesses, he thought that nothing could be better than it was at present. Every facility was already afforded to counsel for eviscerating the facts of a case. There was, however, a want of uniformity in the practice of the Judges towards counsel engaged in examination. Some Judges would not allow them to cross-examine a witness whom they had called themselves, even though he was a hostile one; and others would not *allow them* to put a leading question to a witness, in cross-examination,

if he was only nominally adverse to them. He regretted that tests were excluded, by which the knowledge and skill of a witness could be tried. If he wished to try the power of a witness's memory, he would not be allowed to examine him as to the contents of a letter which he had admitted that he had written—he must put the letter into the witness's hands before he asked him any questions upon it. That question had been raised and decided in the Queen's case, on a question that he had put himself to one of the Italian witnesses. Neither was he allowed to apply any test to his veracity. That test of his truth, as well as of his memory, was not allowed by the jealous system of our law. There was another test of truth, of which he should say the less, as he had brought in a Bill some time ago to remedy the evil of the present law—he alluded to the test of malice to be found in the truth or falsehood of any publication alleged to be libellous. He could not see the reason why persons of any class of religious belief should be considered good witnesses in civil and not in criminal actions. What was the consequence of this absurdity? He had been employed, together with two other learned gentlemen, to prosecute a man for a misdemeanor. But to carry on the proceedings, they required the affidavit of a respectable physician, which was prepared accordingly—and, when prepared, it put an end to the prosecution. For, without their knowing it, he happened to be a Quaker, and could only affirm it, and would not swear it; so that it was of no use. This was bad every way, and as bad for innocence as for guilt, since the only saving witness in a criminal case might chance to be of that persuasion. He thought that no one who believed in the existence of a God and a future state of rewards and punishments, should be excluded from giving his testimony in either kind of trial, the power of crediting the witness always being reserved to the jury: for he thought the law too favourable to the character of a witness which allowed nothing to prevail against his testimony, except the ignominy stamped upon his character by sentence of law fully passed. He had assisted at a trial where there was a foul charge of rape, accompanied with manifest perjury. One witness was asked, "Were you not examined five times during one sessions of the peace on five different prosecutions, in which the five prisoners were all acquitted?" Though the witness answered in the affirmative, it was not held enough to contradict him as a witness *in pays*, because it was not derived from a sentence of record. He went on to object to that jealousy of the law which shuts out explanatory evidence essential to the right understanding of a case, from the dread of having to try too many issues. He complained of that rule by which evidence of documents was settled in the courts. If there were what lawyers termed a potent ambiguity, the Court decided, and the jury did not come in; but if the ambiguity were latent—if the party mentioned, for instance, were John O'Noakes, and there happened to be two of the name in the same neighbourhood, the Court retired, and the jury alone decided. This was founded on a high authority—no less a one than Lord Bacon. He disliked it notwithstanding, and had endeavoured, by appealing to the good sense of the Court in a particular case, to get rid of the distinction, but he was overruled. On the construction of wills, he thought that some plain straight-forward rule ought to be enacted. Why should a different construction attend a gift of an estate for life by deed and by will? These interpretations were of such uncertainty, that a man was generally

as much in the dark as to the quality and extent of the estate devised, before as after his decease. He admired the adoption of words declaratory at once of the intention of the testator to give an estate for life, and no longer. And he would have the expressions interpreted by a rule equally plain, though it should have the effect of rendering in a great measure useless, one of the most ingenious and perfect treatises written on any branch of law, namely, Mr. Fearne's book on Contingent Remainders. Why should the appointment of a debtor as executor be held in one case to be a release of his debt, in another not? In respect to real property, a man might have two wills of the same date, and destroy one because he knew that his friend had the duplicate. This would, in some instances, be held to be a vehement inference of the intention of revoking his will. Suppose a man, having made a will to convey his estate but for one moment out of his own holding, the construction would be that he was in again of the old use, and the will would be void. Lord Erskine lost a considerable estate in Derbyshire by the testator suffering a recovery, to make his possession more secure. Lord Hardwicke had judged, in a case where a man had declared that he had suffered a recovery, the better to confirm his will, that he was in of the old use, and the will was revoked. He complained of the different treatment of wills in different courts. In the civil courts no evidence was admitted upon them but in writing. In the common law, written evidence was excluded, and none but parole evidence admitted. He had known a case where the ecclesiastical courts had found a will to be invalid upon evidence which was set aside on cross-examination orally before the common law for manifest conspiracy. The rule should be the same in every court; one rational, uniform, and consistent law should guide them all. He next came to the statute of limitations, and complained of the law allowing so many stratagems for taking the case out of the statute. Lord Plunket had observed, with his usual strength of beauty and expression, that as time bore a scythe wherewith to destroy all things, the legislature had risen with healing on its wings to preserve all things by a statute of limitations. But lawyers had converted that which was intended for peace and quiet, into disquiet and perpetual uneasiness.

So far had they carried their perversions, as to assert that there was no case which could not be taken out of the statute. Lord Erskine had said, that when a man had a fishing witness sent to him to take a debt claimed of him out of the statute of limitations, his safest course was to knock the witness down, and be tried for the assault. He would prop up the statute of limitations by the statute of frauds; and nothing should take the case out of the former statute by an admission in writing. In questions of real estate, where the *seisin* of the ancestor was pleaded, there must be proofs of 60 years' possession; where the party pleaded his own possession, only 30 years; but in a *formedon*, 20 years were enough. It was not less desirable than just to reduce all these to one period of limitation. The forms of proceeding in these cases, which were wholly opposite to other cases, tended to grievous injustice. The demandant had to set out his title at length, leaving his adversary at liberty to lie in wait to pick holes in his pedigree, perhaps without possessing the slightest sense of justice as to his own possession. In *ejectment, if* a man were out but for a single day, he was immediately *placed in* that adverse position. He had heard of counsel in a

writ of right tried at York. They discovered a flaw in the plantiff's title, and obtained leave to withdraw the record. The defendant, at the next assizes, proved the defect of the title by a document obtained out of the Bishop's chancery, some weeks after the spring assizes, in which he would have been defeated had they gone to trial. There was no statute of limitations for the church, and he could not see why there should not be one. He would not fix the period to 60 years. But he could assign no just reason for the existence of the *nullum tempus* law, by which those possessions were secured. *(Hear.)* A composition might be made between a clergyman and his parishioners. It might be paid for 200 years; and if at the end of that time the proofs of the original agreement were lost, as they were almost sure to be among farmers and persons who worked in the fields, and the clergyman claimed the tithes, there was no bar by limitation. Indeed, there were cases in which the clergyman retained the land given originally for the composition, and had the tithes paid him besides. He advised the appointment of sworn short-hand writers to take notes for the Judges, that their attention might be given more to the points than to the facts, which, as the practice now stood, made no part of the record, except in stating them to the Court, in term, as reasons for granting a new trial. He thought counsel ought to be allowed to comment on their own cases. They were generally obliged to open their cases gingerly, because experience gradually taught them the danger of its breaking down. They were left, too, by the present practice, in the difficulty of a compromise between the danger of calling witnessess for the defence, and leaving the case open to reply. The law should not allow this play of the counsel, but each party should be bound to put forward his whole case in pleading. He next came to the execution of the law. As he would allow no hand to touch the defendant in action for debt, except upon the intention of flight, and as he would allow no molestation of his property or affairs in the course of the proceedings, so he would admit of no let or hindrance in the fulfilment of justice after sentence pronounced. He would make all his property equally available to the payment of his debts. That man must be inconsistent as a reasoner, or of a very ricketty and crochetty state of mind, or else very unprincipled, who would, at this time of day, propose to uphold the dignity of the aristocracy, by converting any portion of them into fraudulent and dishonest debtors. He recommended some change in the award of certain actions (trover, detinue, and replevin), from money to specific performance, as was done always in Chancery, and in all judgments of common law made in *banco*.

The worst chapter of the law as it stood, was that between debtor and creditor, and he was safe in saying that it was the worst known in Europe. A man might die in debt, by simple contract, for 10,000*l.*, and the land which he might have purchased with that very money could not be attached for the debt. Lord Mansfield, whose luminous mind was never undervalued, except by those who were either jealous of his fame, or ignorant of his value in the science of jurisprudence—whom no one ever attacked for a deficiency in his knowledge of the laws, (with the exception of one great writer, whose style gave currency for a time to the assertion, though accompanied by an obvious want of legal knowledge in himself)—that great man had noticed many of the discrepances of the law with the eye of a philosopher who was not to be changed by

the habits of the practitioner. Among the rest he had, in a judgment on a case where the sheriff had seized money in a distraint, observed that the law did not allow a sheriff to seize money, "for this quaint reason, because money cannot be sold, and you are to take your debt out of the produce of a sale of the debtor's goods." So that if a man were distrained for 5000*l.* which should be all counted down and lying upon the table, the sheriff could not touch the money; and Lord Ellenborough had actually denounced the attempt, in a more recent case, as an innovation of the law, which required immediate correction. Formerly it was the practice to adhere to the letter contrary to the spirit of the law. I would, by changing the letter of the law, preserve its spirit. In times of old, a man's property solely consisted in his goods and chattels. Money was then but little used. There were no bills of exchange—no stocks—no funds. Land was then unrepresented by money, or other transferable securities. The funds have since risen; money has come into general use; credit has followed in the train of trade. Are we, then, still to retain the old law? and shall it undergo no change when circumstances have arisen totally opposed to those under which it was enacted? Sir, I defy the wit of man to prevent innovation. He who raises his voice against innovation, and says, "Don't change the law," while he admits that the times and circumstances are totally changed, is himself the real innovator. It is in the nature of things that change must produce change. We behold a vessel sailing down a stream: a boat glides in its rear—

"Pursues its triumph, and partakes the gale."

As well might a man on the shore cry out, "Stop the boat that it may not follow the ship," as he who would raise an outcry against innovations, and endeavour to retain us in our position by opposing all improvement. We must accommodate the law to the circumstances of the times. The laws, and the circumstances which those laws are intended to meet, must be maintained in their relative position; like the ship and the boat, they must float down the stream of time together.

Such is the great dispensation of Providence, and over it we can exercise no control. It would be a fatal maxim indeed, that there should be no change in the law—no adaptation of it to the times in which we live. He who would support such a doctrine, would be himself the greatest and most violent innovator of all. (*Hear, hear.*) I would have all a man's goods seized, to satisfy the demands of his creditors. I would have the person of the guilty debtor—of the man who conceals goods, that he ought to give up—also seized. I would have the circumstances of such a man thoroughly sifted, and every particle of his property made available to the claims against him. But after seizing upon all the goods of a debtor, I would not take up his person unless his conduct had been criminal, or quasi-criminal—unless he had been a rash adventurer, or a speculating swindler, who had existed upon fraud, and obtained goods for which he never intended to pay. Such distinctions are frequently made in the Insolvent Courts. Imprisonment is there, in many cases, imposed as a satisfaction for the debt. It is not that the law considers such imprisonment as a means of contracting payment of the debts originally incurred, but it *is inflicted as a punishment* for the misconduct of the fraudulent debtor. *If it were in the power* of the Court to separate the question of pro-

perty from that of the conduct of the individual, and to say, this debtor shall be imprisoned for three months, and that debtor for six months, awarding a punishment proportionate to the degree of criminality, as is done every day in the Insolvent Debtors' Court, then I would say that this branch of the law had attained to as much perfection as it is susceptible of, in the nature of things. There are one or two remarks which I wish to make upon the subject of appeals. They flow obviously from the former principles which I have laid down. I would endeavour to prevent vexatious litigation, by way of appeal, for the purpose of delay. I would not make it an object to individuals to obtain delay, by defending actions at great expense. I would have the party, in a case of appeal, give full and good security, and upon this condition, that if the Court decided against him, his security should be forfeited, and handed over to the respondent. The learned gentleman opposite, has recognized the same principle in his Bill, modifying the Act of James I. I would allow a Judge the power to say, that a debtor may pay by instalments, upon giving good security, and I would leave the whole matter to the Judge's legal discretion. The consequence would be, that property would not be uselessly torn from a man—that needless delays would not be interposed to obstruct the adjustment of his affairs, and that his creditors would be afforded a cheap, safe, and expeditious mode of recovering their respective claims. (*Hear, hear.*) Parties would be prevented from seeking delay by incurring the formidable expense of going to trial, and afterwards of taking out writs of error, were these measures adopted—and I have great hopes that they will be adopted. I have said little or nothing upon the subject of costs, and yet it is one of great importance, and immediately connected with this discussion. Should a man ask my opinion as to whether he should institute an action in a certain case, I would not advise him, or any man, to do so against a pertinacious debtor. He might get a verdict for 20*l.*, the amount of his claim, but he would have, perhaps, 30*l.* or 40*l.* to pay in the way of costs for the action. I have known an instance in which the action was upon a bill for 428*l.*, and the costs amounted to 202*l.* The plaintiff gained in every stage of the proceedings, and he lost, in the end, 202*l.* In another case, where the verdict was for 217*l.*, the costs amounted to 76*l.* In the Court of Exchequer, where the expense of law proceedings is not, comparatively speaking, great, I have known a case where the demand was for 63*l.*, and the costs were 14*l.*; another, where the demand was for 48*l.*, and the costs amounted to 24*l.* The same costs are incurred, whether the action be instituted for 60*l.* or 600*l.* Similar costs will be incurred, whether the plaintiff's demand be under or over 100*l.* How can such a state of things be remedied? Obviously by establishing better rules of law. The attornies have been deprived of certain charges upon divers matters, and they make amends for that by increasing their charges upon other matters. They are not at present allowed to charge for a consultation with counsel, a thing in many cases frequently necessary; they are not allowed to charge for preparing the cause for trial; and they are not allowed the expenses of the witnesses required to sustain it. In an action for 228*l.*, I have known the expenses incurred in procuring witnesses, to amount to 147*l.* I would adopt a different practice; I would enable a plaintiff to see his way in the bringing of an action, so that he might be aware of the

costs incurred as he proceeded, and that he could stop at an early stage, if he did not feel it prudent to incur more expense. You see the evil effects produced by a partial change of the law. The whole system hangs together: take away one portion, and instead of consolidating, you disturb and disjoint the remainder. It is, as in the physical body, where you can never cure a fracture, unless you attend to and examine the system at large. What would be thought of a surgeon who should set about reducing an apparent luxation, without previously ascertaining whether a false joint had been formed? You must look at the whole system of the law together, in order to arrive at a temperate and proper reformation of its abuses. Are you afraid of changes? We have, I can inform you, great authority upon our side. I need not travel to the reformers of the laws of Scotland—of a people as jealous of their rights, and justly so, as any under the sun. There were none so prone to change, improvement, and consolidation, as the old law-givers of Scotland. Before the Justinian code, it is said the civil law was comprised in 2000 volumes—your own statute-book furnishes another sad example of the accumulation of laws. The whole statutes of Scotland are comprised in three small duodecimos. Will you hesitate to reform, when you behold it effect such benefits? I take my authority from Lord Hale—than whom there did not exist a man more firmly attached to the constitution of the country. He says that men are agreed that laws are established for the good of mankind, and that it would be right to retain the forms and practices of law as long as they appeared reasonable, and that any future change in these matters should only be made where a perseverance in them would be prejudicial to common justice and to the good of mankind. These forms and practices, he adds, were instituted for the sake of public justice, and whenever they should be found not to answer that end, they may and must be altered. Such is the opinion of Lord Hale. I could also adduce the authority of another great lawyer, Mr. Shepherd, to the same effect. I may also refer you to an extremely able work, lately published by Mr. Parkes, the solicitor at Birmingham, entitled *A History of the Court of Chancery*. It displays great learning, and considerable research into the history of the common law. The Parliament of the Commonwealth, in 1654, appointed a committee to reform the laws. Who was appointed at the head of that committee? The then member for Cambridge—Oliver Lord General Cromwell. He, indeed, was of a more martial character than my learned friend opposite, the present representative for that University. (*A laugh.*) If Lord General Cromwell's name were the first on the list of the committee in the House, which was first upon that out of the House (for the members of the committee were selected both in and out of the house)? The name of Mathew, afterwards Sir Mathew Hale, occupies that station. He was, I need not add, the greatest lawyer of his day. That committee proposed various remedies: amongst others, the establishment of a small debt court—of a county court—of a court for fraudulent debtors—the formation of a general registry; and they likewise recommended that defendants in criminal actions should be allowed to examine witnesses on oath in their defence. Such was not the law at the period. It was reserved for the times of the good Queen Anne to see this judicious recommendation of the committee of the Cromwellian Parliament carried into effect. After

the Restoration, a committee was appointed to examine the laws, and to propose such remedies as they considered necessary. There were fifty-one lawyers upon that committee. Three or four bills were introduced by them, and passed through several stages in this House for the general amendment of the law. I only wish you to institute a similar inquiry. I call upon you to enter speedily and rigorously into an examination of the present state of the law, with a view to its general amendment. In such a project I expect to receive support from Government. What, it may be asked, are my hopes? I do not expect figs from thorns, nor roses from thistles. But why should not the fig-tree bear fruit, and why should not the rose put forth its perfume? I am no prophet, certainly, but there are members of the present Government, whose liberal opinions promise me assistance, and some of whom have given very recent expression to those opinions. (*Hear kear.*) There are other members of that Government with whom I lament to be say I differ widely upon a great and important question. The gentleman, however, to whom I more particularly allude, satisfactorily agrees with me upon the leading points of the momentous question which I have brought under your notice this night. Is it too much, then, to expect the support of the present administration? At all events, I repose with confidence upon the support of this House. You have a great and glorious race to run, your name will go down to posterity as that of the most useful and important Parliament that ever met. The far-famed conqueror of his time, the victor of Italy and Germany, counted all his triumphs pitiful and not worthy of being mentioned, while his name, he said, would descend to future ages in company with that code which he had established. Try to rival him—not in the desolating paths of war, but in the sacred arts of peace. (*Cheers.*) The flatterers of the Edwards and the Henries compared them to Justinian,—a far higher praise could be with truth bestowed upon that Parliament, and that King, under whose sanction, by whose assistance, counsel, and advice, a thorough and wholesome amendment should be effected in the laws of this realm. (*Cheers.*) If a Crown, to my simple view, possesses any lustre, it is because it enables those who wear it to promote the welfare of mankind. Augustus boasted that he found Rome brick, and that he left it marble. A greater boast may yet be made by your King—that he found the law dear, and that he left it cheap (*Cheers*); that he found it a sealed book, and that he left it a volume open to all (*Cheers*); and that he found it the patrimony of the rich, and that he left it the inheritance of the poor (*Loud cheers*); that he found it a sword in the hands of oppression and craft; and that he left it the staff of honesty and the shield of the innocent. (*Cheers.*) To me, much reflecting upon these things, there is no higher glory to which my ambition could aspire;—there is no honour which as a man and a lawyer I would more greedily covet, than to be the humble instrument of directing your labours to this all-important object. For office, or patronage, or emolument, I care not: I am content with what the labour of my hands supplies me. To me power has no charms; I shall upon all occasions fearlessly, and I trust faithfully, support my fellow-countrymen when claiming their just rights; and there is nothing I know of their lawful grievances which I shall not lay before this House and the world. The power to advocate the rights of my fellow-countrymen within these walls, as well as out of these walls,—that is the power which I desire to possess and exercise. (*Cheers.*) It is a power which is given to no changes of

the Government, and which cannot be taken away by any Ministry. *(Loud cheers.)*

Sir, I move, "That an humble address be presented to His Majesty, respectfully requesting that it may be His Majesty's pleasure to cause a commission to issue, to inquire into the abuses which have been introduced in the course of time into the administration of the laws of these realms, and of the courts of common law, and to report upon what remedies it may seem fit and expedient to adopt for their removal." The Learned Gentleman sat down at twenty minutes to eleven o'clock, amidst loud cheers from all sides of the House.

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